

1 LOIS J. SCHIFFER  
2 Assistant Attorney General  
3 Environment & Natural Resources Division  
4 U.S. Department of Justice  
5 Washington, D.C. 20530

6 WILLIAM A. WEINISCHKE  
7 Trial Attorney  
8 Environmental Enforcement  
9 Environment & Natural Resources Division  
10 U.S. Department of Justice  
11 P.O. Box 7611, Ben Franklin Station  
12 Washington, D.C. 20044  
13 (202) 514-4592

14 NORA M. MANELLA  
15 United States Attorney  
16 LEON W. WEIDMAN  
17 Chief, Civil Division

18 Continued After Caption

19 IN THE UNITED STATES DISTRICT COURT  
20 FOR THE CENTRAL DISTRICT OF CALIFORNIA

21 UNITED STATES OF AMERICA and  
22 STATE OF CALIFORNIA, DEPARTMENT  
23 OF TOXIC SUBSTANCES CONTROL,

24 Plaintiffs,

25 vs.

26 LOCKHEED MARTIN CORPORATION; CITY  
27 OF BURBANK, CALIFORNIA, a Charter  
28 City; WEBER AIRCRAFT, INC.; ACCRA-  
29 TRONICS SEALS CORPORATION; WILLIAM  
30 H. FISCH TRUST, DATED OCTOBER 29,  
31 1993; JONES FAMILY TRUST, DATED  
32 MAY 14, 1993; ADLER SCREW PRODUCTS,  
33 INC.; EIRIK LIRHUS; BERGLJOT  
34 LIRHUS; LIRHUS FAMILY TRUST;  
35 AEROQUIP CORPORATION; TRINOVA  
36 CORPORATION; A-H PLATING, INC.;  
37 E WASCHAK FAMILY TRUST;  
38 JOHN P. WASCHAK; MELBA R.  
39 WASCHAK; AVIAL SERVICES, INC.;  
40 AVICA, INC.; MCENTEE FAMILY  
41 PARTNERSHIP; B.J. GRINDING, INC.;  
42 ROBERT J. HOISETH; GLENDA HOISETH;

43 CIVIL ACTION NO. 91-  
44 4527-MRP (Tx)

45 SECOND CONSENT DECREE  
46 FOR SAN FERNANDO VALLEY  
47 SUPERFUND SITE, BURBANK  
48 OPERABLE UNIT

ENTERED  
CLERK, U.S. DISTRICT COURT

JUN 23 1998

CENTRAL DISTRICT OF CALIFORNIA  
DEPUTY

FILED  
CLERK, U.S. DISTRICT COURT

JUN 22 1998

CENTRAL DISTRICT OF CALIFORNIA  
DEPUTY

4527  
ENTERED  
CLERK, U.S. DISTRICT COURT

MAY 26 1998

CENTRAL DISTRICT OF CALIFORNIA  
DEPUTY

NOTICE OF ENTRY  
JUN 27 1998

KB

1 HOISETH FAMILY TRUST; JOSEPH F. )  
BANGS, DBA BANGS MANUFACTURING )  
2 COMPANY; BANGS TRUST, DATED )  
OCTOBER 3, 1990; MEL BERNIE & )  
3 COMPANY, INC., DBA ACCESSORY )  
PLATING AND 1928 JEWELRY LTD.; )  
4 LAURIE S. BERNIE AND MELVYN J. )  
BERNIE, AS TRUSTEES OF THE BERNIE )  
5 TRUST; THE BERNIE TRUST; BURMAR )  
METAL FINISHING CORP. DBA BARRON )  
6 ANODYZING AND PAINT; CRANE CO., )  
HYDRO-AIRE DIVISION; DELTRON ENGI- )  
7 NEERING, INC.; FILIJAN AND KUEBLER )  
PROPERTIES; MICHAEL FILIJAN; TONY )  
8 KUEBLER; HYDRA-ELECTRIC COMPANY; )  
DAVIS INDUSTRIES, INC.; JANCO )  
9 CORPORATION, BKT ENTERPRISES, )  
INC.; JOSLYN CORPORATION, LLC, )  
10 FKA JOSLYN CORPORATION, JOSLYN SUN- )  
BANK COMPANY, LLC FKA JOSLYN )  
11 SUNBANK CORPORATION; OCEAN )  
TECHNOLOGY, INC.; TEXTRON, INC.; )  
12 HR TEXTRON INC.; PACIFIC PARTNER- )  
SHIP; SARGENT INDUSTRIES, INC.; )  
13 ANTONINI FAMILY TRUST; MARIO )  
E. ANTONINI AND MARISI A. )  
14 ANTONINI, TRUSTEES; SIERRACIN )  
CORPORATION; INDUSTRIAL BOWLING )  
15 CORPORATION; R&G SLOANE )  
MANUFACTURING CO., INC.; )  
16 SPACE-LOK, INC., LERCO DIVISION; )  
THE ESTATE OF ALBINA BREBBIA; )  
17 CHRISTINA COGAR, INDIVIDUALLY )  
AND AS EXECUTRIX FOR THE ESTATE )  
18 OF ALBINA BREBBIA; STAINLESS )  
STEEL PRODUCTS, INC.; ZIMMERMAN )  
19 HOLDINGS, INC.; THE UHLMANN )  
OFFICES, a California corporation; )  
20 SUNHILL PARTNERS, a California )  
partnership; STEVE'S PLATING )  
21 CORPORATION; TERRY S. KNEZEVICH; )  
UNIFACTOR, INC., WALTON R. EMMICK; )  
22 CLELTA SPELMAN; DIANE BARR; ELAINE )  
S. BARR; THE HOMER R. BARR AND )  
23 ELAINE S. BARR FAMILY TRUST; )  
L.A. GUAGE COMPANY, INC.; )  
24 TWISS HEAT TREATING CO., INC. )  
DBA TWISS HEAT TREATING CO.; )  
25 THE WILLIAM E. AND EVELYN TWISS )  
FAMILY TRUST; WILLIAM E. TWISS )  
26 AND EVELYN TWISS; W AND E TWISS )  
TRUST; VALLEY ENAMELLING CORP.; )  
27  
28

1 DENISE E. MCLAUGHLAN; SHARYN E. )  
2 SCHRICK; SANDRA E. BOWMAN; )  
3 HM HOLDINGS, INC.; PH BURBANK )  
4 HOLDINGS, INC., )

5 Defendants. )  
6 )  
7 )  
8 )  
9 )  
10 )  
11 )  
12 )  
13 )  
14 )  
15 )  
16 )  
17 )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

5 MONICA MILLER  
6 Assistant United States Attorney  
7 Central District of California  
8 Federal Building  
9 300 North Angeles St.  
10 Los Angeles, CA 90012  
11 (213) 894-4061

9 NANCY J. MARVEL  
10 Regional Counsel  
11 MARIE M. RONGONE  
12 Assistant Regional Counsel  
13 United States Environmental Protection  
14 Agency, Region IX  
15 75 Hawthorne Street  
16 San Francisco, CA 94105  
17 (415) 744-1313

18 Attorneys for Plaintiff, United States of America

15 DANIEL E. LUNGREN  
16 Attorney General of the State of California  
17 THEODORA BERGER  
18 Assistant Attorney General  
19 ANN RUSHTON  
20 Deputy Attorney General  
21 300 Spring Street, Suite 5212  
22 Los Angeles, CA 90013  
23 (213) 897-2608

24 Attorneys for Plaintiff, State of California  
25  
26  
27  
28

I. <u>BACKGROUND</u>	1
II. <u>JURISDICTION</u>	9
III. <u>PARTIES BOUND</u>	10
IV. <u>DEFINITIONS</u>	11
V. <u>GENERAL PROVISIONS</u>	24
VI. <u>PERFORMANCE OF THE WORK</u>	28
VII. <u>ADDITIONAL RESPONSE ACTIONS</u>	41
VIII. <u>EPA PERIODIC REVIEW</u>	43
IX. <u>QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS</u>	44
X. <u>ACCESS</u>	47
XI. <u>REPORTING REQUIREMENTS</u>	50
XII. <u>SUBMISSIONS REQUIRING AGENCY APPROVAL</u>	54
XIII. <u>PROJECT COORDINATORS</u>	57
XIV. <u>FUNDING OF RESPONSE ACTIVITIES</u>	58
XV. <u>CERTIFICATION OF COMPLETION</u>	89
XVI. <u>EMERGENCY RESPONSE</u>	93
XVII. <u>REIMBURSEMENT OF RESPONSE COSTS</u>	94
XVIII. <u>INDEMNIFICATION AND INSURANCE</u>	98
XIX. <u>FORCE MAJEURE</u>	103
XX. <u>DISPUTE RESOLUTION</u>	107
XXI. <u>STIPULATED PENALTIES</u>	112
XXII. <u>COVENANTS NOT TO SUE BY PLAINTIFFS</u>	122
XXIII. <u>COVENANTS BY SETTLING DEFENDANTS</u>	130
XXIV. <u>EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION</u>	132
XXV. <u>ACCESS TO INFORMATION</u>	136



XXVI.	<u>RETENTION OF RECORDS</u>	138
XXVII.	<u>NOTICES AND SUBMISSIONS</u>	139
XXVIII.	<u>EFFECTIVE DATE</u>	141
XXIX.	<u>RETENTION OF JURISDICTION</u>	141
XXX.	<u>APPENDICES</u>	141
XXXI.	<u>COMMUNITY RELATIONS</u>	143
XXXII.	<u>MODIFICATION</u>	144
XXXIII.	<u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u>	145
XXXIV.	<u>SIGNATORIES/SERVICE</u>	146

CONSENT DECREE

I. BACKGROUND

A. Summary of Site Background.

The following is a summary of the Site background as alleged by the United States which, for the purposes of this Consent Decree, Settling Defendants neither admit nor deny:

1. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of California Department of Toxic Substances Control ("State") have filed concurrently with this Consent Decree a supplemental complaint pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9606 and 9607 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA").

2. The United States and the State in the supplemental complaint, seek, inter alia: (1) reimbursement of costs of response incurred by EPA, the Department of Justice, and the State for response actions at the Burbank Operable Unit Site ("Site") of the San Fernando Valley Superfund sites, with accrued interest; and (2) performance of response work by the Defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

3. This is the second complaint the United States has filed in this action. Pursuant to the first complaint, a consent decree ("First Consent Decree") was entered by this Court on

March 25, 1992. A copy of the First Consent Decree is included as Exhibit 1 to this Consent Decree. Under Section XXIII (Continuing Jurisdiction) of the First Consent Decree, this Court retained jurisdiction over both the subject matter and the parties to the original action for the duration of the First Consent Decree and for the purpose of issuing such further orders or directions as may be necessary or appropriate to construe, implement, modify, enforce, terminate or reinstate the terms of the First Consent Decree or for any further relief as the interest of justice may require.

4. The First Consent Decree provided for the defendants to the first complaint, Lockheed Corporation (now Lockheed Martin Corporation, hereinafter "Lockheed Martin"), the City of Burbank, and Weber Aircraft, Inc. ("Weber"), to fund and/or to perform certain response actions at the Site, and for Lockheed Martin and Weber to pay certain costs of response incurred by EPA and the Department of Justice with respect to the Site. This consent decree ("Second Consent Decree" or "this Consent Decree") provides for the defendants that have entered into this Consent Decree (collectively, "Settling Defendants") to fund and/or to perform the remainder of the response actions and to pay part of EPA's, the Department of Justice's, and the State's remaining costs of response for the Site. In general, the Second Consent Decree provides for the continued operation and maintenance of (1) the facilities constructed under the First Consent Decree, and (2) the facilities constructed under EPA Unilateral Administrative Order No. 92-12 ("UAO 92-12") by the

parties to UAO 92-12 ("UAO Parties"), during the final eighteen years of the interim remedy operating period. The Second Consent Decree further provides for: (a) the performance of the UAO Remedial Action Work by the UAO Parties (who are all Settling Defendants), pursuant to UAO 92-12, to the extent that work has not been completed at the time the Second Consent Decree is entered; and (b) the possible dismantling or decommissioning of these facilities upon completion of the interim remedy.

5. Tests conducted on San Fernando Valley groundwater in the early 1980's revealed significant concentrations of volatile organic compounds ("VOCs") in San Fernando Valley basin ("Basin") groundwater. The primary VOCs found in the Basin groundwater were trichloroethylene ("TCE") and perchloroethylene ("PCE"), which were widely used solvents in machinery degreasing, metal plating and dry cleaning. TCE and PCE have been found at the Site at levels that exceed the Maximum Contaminant Levels ("MCLs") for these hazardous substances. MCLs are safe drinking water standards established under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f et seq. The Federal MCL for TCE and PCE is 5 parts per billion ("ppb").

B. Based on investigations of Basin groundwater, and pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, in June 1986 EPA placed four well field sites in the San Fernando Valley on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register (see 51 Fed. Reg. 21054): (1) the North Hollywood Superfund site (Area 1); (2) the Crystal Springs Superfund site (Area 2); (3) the Pollock

1 Superfund site (Area 3); and (4) the Verdugo Superfund site (Area  
2 4).

3 C. EPA is conducting a Basin-wide Remedial Investigation  
4 and Feasibility Study ("RI/FS") for the San Fernando Valley  
5 Superfund sites, which EPA manages as one large Superfund site.  
6 EPA has also entered into a multi-site cooperative agreement with  
7 the California Department of Health Services ("DHS") which funds  
8 DHS participation in remedial activities at many California  
9 Superfund sites, including the San Fernando Valley sites. In  
10 September of 1989, EPA entered into a cooperative agreement with  
11 the California State Water Resources Control Board ("SWRCB").  
12 Under that cooperative agreement, SWRCB funds the Los Angeles  
13 Regional Water Quality Control Board's ("RWQCB") ongoing source  
14 investigation and source control work in the Basin.

15 D. EPA has designated four operable units within the San  
16 Fernando Valley Superfund sites known as the North Hollywood,  
17 Burbank, Glendale North and Glendale South operable units. This  
18 Site, the Burbank Operable Unit Site, is one of those four  
19 operable units.

20 E. EPA has issued interim Records of Decision ("RODs")  
21 prescribing interim remedies for each of these operable units.

22 F. The Site is part of the North Hollywood (Area 1)  
23 Superfund site, and is the second operable unit in the Basin for  
24 which EPA has issued an interim ROD. The Site includes the  
25 northeast corner of the North Hollywood Superfund site, as well  
26 as the areas to which the plume of TCE and PCE has spread beyond  
27 the original boundaries drawn at the time the North Hollywood  
28

1 Superfund site was listed on the NPL.

2 G. EPA completed an Operable Unit Feasibility Study  
3 ("OU/FS") Report on the Site in October 1988.

4 H. The comment period on the OU/FS Report and the Proposed  
5 Plan for the Site opened on October 19, 1988 and closed December  
6 2, 1988. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617,  
7 EPA published notice of the completion of the OU/FS and of the  
8 Proposed Plan in two major local newspapers of general  
9 circulation, the Los Angeles Times and the Burbank Leader. EPA  
10 provided an opportunity for written and oral comments from the  
11 public on the Proposed Plan for remedial action. A copy of the  
12 transcript of the public meeting is available to the public as  
13 part of the Administrative Record upon which the Regional  
14 Administrator based the selection of the interim response actions  
15 selected for the Site.

16 I. EPA issued an interim ROD for the Site on June 30, 1989,  
17 which the State had a reasonable opportunity to review. A copy  
18 of the ROD is appended as Appendix A to the First Consent Decree.  
19 The ROD included a responsiveness summary responding to the  
20 public comments received at the public meeting. Notice of the  
21 Final Plan was published in accordance with Section 117(b) of  
22 CERCLA. The remedy described in the ROD was modified by EPA's  
23 Explanation of Significant Differences issued by EPA on November  
24 21, 1990 ("ESD 1"). A copy of ESD 1 is included as Appendix B to  
25 the First Consent Decree. Furthermore, EPA included in the First  
26 Consent Decree certain modifications to the interim remedy, as  
27 provided in Subpart F of Section VII of that decree (Work To Be  
28

Performed). Those modifications did not represent a fundamental change to the remedy selected in the ROD and ESD1. The remedy described in the ROD was further modified by EPA's second Explanation of Differences executed by EPA on February 12, 1997 ("ESD2"). Those modifications also did not represent a fundamental change to the remedy selected in the ROD and ESD1. A copy of EPA's ESD2 is included as Appendix 5 to this Consent Decree.

J. In 1989, pursuant to Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), EPA issued Special Notice for Remedial Design and Remedial Action to potentially responsible parties for the Site. By its 1989 Special Notice, EPA sought the construction, operation and maintenance of the interim remedy for the Site. As more fully described in the ROD, that remedy consists of groundwater extraction and treatment facilities, a blending facility, and systems for delivering the treated groundwater to the public water supply. The treated, blended groundwater delivered to the public water supply shall meet all drinking water standards established by the United States and the State of California. The interim remedy is required to operate for twenty (20) years.

K. In the First Consent Decree, Lockheed Martin, Weber and the City of Burbank agreed to construct and/or to fund the construction of the treatment plant for the Burbank Operable Unit, and to operate and maintain and/or to fund the operation and maintenance of the treatment plant for two years after construction is complete. Lockheed Martin and Weber also agreed

1 to pay part of EPA's and the Department of Justice's costs for  
2 the Site.

3 L. In March 1992, EPA issued UAO 92-12 to six potentially  
4 responsible parties who had received the 1989 Special Notice:  
5 Aeroquip Corporation, Crane Company, Inc., Janco Corporation,  
6 Sargent Industries, Incorporated, the Antonini Family Trust and  
7 Ocean Technology, Incorporated. Copies of UAO 92-12 and the  
8 April 28, 1992 Amendment to UAO 92-12 are included as Exhibit 2  
9 to this Decree. UAO 92-12 ordered these parties to construct a  
10 blending facility to receive and blend the treated groundwater  
11 with another source of water to reduce nitrate levels, and to  
12 deliver the water to the public water supply system.

13 M. In this action, EPA and the State seek reimbursement of  
14 past and future response costs, including Basin-wide Response  
15 Costs for the Site, which are not reimbursed pursuant to the  
16 First Consent Decree. EPA also seeks the performance of the  
17 Operation and Maintenance ("O&M") of the treatment and blending  
18 facilities for the period not provided by the First Consent  
19 Decree or UAO 92-12.

20 N. Based on the information presently available to EPA and  
21 the State, EPA and the State believe that this work will be  
22 properly and promptly conducted by the Settling Defendants if  
23 conducted in accordance with the requirements of this Consent  
24 Decree and its appendices.

25 O. The State is not a party to the First Consent Decree.  
26 In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42  
27 U.S.C. § 9621(f)(1)(F), EPA notified the State on September 7,  
28



1 1994 of negotiations with potentially responsible parties  
2 regarding the implementation of the remainder of the remedial  
3 action for the Site, and EPA has provided the State with an  
4 opportunity to participate in such negotiations and be a party to  
5 this Consent Decree.

6 P. The State has joined in the United States' supplemental  
7 complaint and is alleging that the defendants are liable to the  
8 State under Section 107 of CERCLA, 42 U.S.C. § 9607, and under  
9 Chapter 6.8, Section 25300 et seq., of the California Health &  
10 Safety Code, for the State's past and future response costs at  
11 the Site.

12 Q. In accordance with Section 122(j)(1) of CERCLA, 42  
13 U.S.C. § 9622(j)(1), EPA notified the United States Department of  
14 the Interior on September 15, 1994 of negotiations with  
15 potentially responsible parties regarding the release of  
16 hazardous substances that may have resulted in injury to natural  
17 resources under federal trusteeship and encouraged the trustee(s)  
18 to participate in the negotiation of this Consent Decree.

19 R. Settling Defendants deny any and all legal or equitable  
20 liability under any federal, state, or local statute, regulation  
21 or ordinance, or the common law, for any response costs, damages  
22 or claims caused by or arising out of conditions at or arising  
23 from the Burbank well field or the Site. By entering into this  
24 Consent Decree, or by taking any action in accordance with it,  
25 Settling Defendants do not admit any allegations contained herein  
26 or in the complaints, nor do Settling Defendants admit liability  
27 for any purpose or admit any issues of law or fact or any  
28

responsibility for releases of hazardous substances into the environment. Nothing in this Paragraph shall alter Settling Defendants' agreement not to challenge the Court's jurisdiction as set forth in Section II ("Jurisdiction"), or in any manner whatsoever affect Settling Defendants' obligations or rights under this Consent Decree, the First Consent Decree or UAO 92-12.

S. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

T. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the interim remedial action selected by the ROD and the work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President. NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

## II. JURISDICTION

This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of

1 this Consent Decree or this Court's jurisdiction to enter and  
2 enforce this Consent Decree.

3 III. PARTIES BOUND

4 A. This Consent Decree applies to and is binding upon the  
5 United States and the State and upon Settling Defendants and  
6 their heirs, successors and assigns. Any change in ownership or  
7 corporate status of a Settling Defendant including, but not  
8 limited to, any transfer of assets or real or personal property  
9 shall in no way alter such Settling Defendant's responsibilities  
10 under this Consent Decree.

11 B. Settling Work Defendant (as defined below) shall  
12 provide a copy of this Consent Decree to each contractor hired to  
13 perform the O&M Activities (as defined below) required by this  
14 Consent Decree and to each person representing Settling Work  
15 Defendant with respect to the Site or the O&M Activities and  
16 shall condition all contracts entered into hereunder upon  
17 performance of the O&M Activities in conformity with the terms of  
18 this Consent Decree. Settling Work Defendant or its contractor  
19 shall provide written notice of this Consent Decree to all  
20 subcontractors hired to perform any portion of the O&M Activities  
21 required by this Consent Decree. Settling Work Defendant shall  
22 nonetheless be responsible for ensuring that its contractors and  
23 subcontractors perform the O&M Activities contemplated herein in  
24 accordance with this Consent Decree. With regard to the  
25 activities undertaken pursuant to this Consent Decree, each  
26 contractor and subcontractor shall be deemed to be in a  
27 contractual relationship with Settling Work Defendant within the  
28

1 meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

2 IV. DEFINITIONS

3 A. Unless otherwise expressly provided herein, terms used  
4 in this Consent Decree which are defined in CERCLA or in  
5 regulations promulgated under CERCLA shall have the meaning  
6 assigned to them in CERCLA or in such regulations. Whenever  
7 terms listed below are used in this Consent Decree or in the  
8 appendices attached hereto and incorporated hereunder, the  
9 following definitions shall apply:

10 "Basin-wide Response Costs" shall mean all costs, including,  
11 but not limited to, direct and indirect costs and interest,  
12 payroll costs, contractor costs, travel costs, laboratory costs,  
13 attorneys' fees and just compensation, that the United States or  
14 the State has incurred or paid or will incur and pay with regard  
15 to basin-wide non-operable unit-specific response actions.

16 "Blending Facility" shall mean the blending facility and  
17 related pipeline designed and constructed by the UAO Parties  
18 pursuant to UAO 92-12, beginning generally with the B-5  
19 Connection and concluding with the Point of Interconnection, as  
20 "B-5 Connection" and "Point of Interconnection" are defined in  
21 the First Consent Decree.

22 "CERCLA" shall mean the Comprehensive Environmental  
23 Response, Compensation, and Liability Act of 1980, as amended, 42  
24 U.S.C. §§ 9601 et seq.

25 "City" or "City of Burbank" shall mean the City of Burbank,  
26 California, as a charter city, and any of its divisions,  
27 departments and other subdivisions. "City" or "City of Burbank"  
28

1 shall not include any joint powers authority of which the City of  
2 Burbank is a member.

3 "Consent Decree" or "Second Consent Decree" shall mean this  
4 Consent Decree and all appendices attached hereto (listed in  
5 Section XXX). In the event of conflict between this Consent  
6 Decree and any appendix, this Consent Decree shall control.

7 "Date of Commencement" shall mean, in general, the date  
8 specified by EPA that Settling Work Defendant will assume the O&M  
9 responsibilities for the Burbank Operable Unit interim remedy,  
10 and Lockheed Martin and the UAO Parties shall cease their  
11 respective obligations to perform under the First Consent Decree  
12 or UAO 92-12. The parties anticipate that this date will be two  
13 years after the System Operation Date for phase two of the  
14 Remedial Action Work as specified in the First Consent Decree  
15 unless delays, including without limitation delays which any  
16 party attributes to a force majeure event, cause that date to be  
17 extended. Within thirty (30) days of the System Operation Date  
18 for phase two of the Remedial Action Work as specified in the  
19 First Consent Decree, EPA will specify the tentative Date of  
20 Commencement and notify the Settling Work Defendant, Lockheed  
21 Martin and the UAO Parties of the tentative Date of Commencement.  
22 EPA may revise the tentative Date of Commencement at any time  
23 during phase two of the Remedial Action Work as specified in the  
24 First Consent decree, and shall notify the Settling Work  
25 Defendant, Lockheed Martin and the UAO Parties of any such  
26 revision. EPA's specified tentative Date of Commencement shall  
27 control all reporting and similar requirements which are required  
28

1 to occur in relation to the Date of Commencement. However, in no  
2 event shall the Date of Commencement specified by EPA extend the  
3 amount of time the interim remedy is required to operate under  
4 the ROD.

5 "Day" shall mean a calendar day unless expressly stated to  
6 be a working day. "Working Day" shall mean a day other than a  
7 Saturday, Sunday, or federal or State of California holiday. In  
8 computing any period of time under this Consent Decree, where the  
9 last day would fall on a Saturday, Sunday, or federal or State of  
10 California holiday, the period shall run until the close of  
11 business of the next Working Day.

12 "Department of Health Services," or "DHS" shall mean the  
13 California pollution control agency of that name and any  
14 successor departments or agencies of the State of California with  
15 authority to implement the Safe Drinking Water Act.

16 "Department of Toxic Substances Control" or "DTSC" shall  
17 mean the California pollution control agency of that name and any  
18 successor departments or agencies of the State of California.

19 "Design Defect" shall mean a failure of any system required  
20 to be designed and constructed pursuant to the First Consent  
21 Decree or UAO 92-12 to perform as originally designed, which  
22 results from a failure by a design professional used by Lockheed  
23 Martin or the UAO Parties to adequately design the system to  
24 perform in the manner intended, and as described in the design  
25 specifications contained in the Final Remedial Design Reports  
26 prepared by Lockheed Martin pursuant to the First Consent Decree  
27 or the UAO Parties pursuant to UAO 92-12.  
28

"Downstream Facilities" shall mean the Blending Facility constructed by the UAO Parties pursuant to UAO 92-12 and facilities constructed or repaired by the City of Burbank pursuant to the First Consent Decree. Downstream Facilities also shall mean additional facilities which may be constructed pursuant to this Consent Decree downstream of the Upstream Facilities, as defined in this Section. "Downstream" shall mean the flow of extracted, treated groundwater beginning generally with the Point of Delivery as "Point of Delivery" is defined by the First Consent Decree.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Explanation of Significant Differences 1" or "ESD1" shall mean the document dated November 21, 1990, Appendix B to the First Consent Decree. "Explanation of Significant Differences 2" or "ESD2" shall mean the Explanation of Significant Differences dated February 12, 1997, Appendix 5 to this Consent Decree.

"First Consent Decree" shall mean the consent decree entered by this Court on March 25, 1992, resolving the underlying complaint filed by the United States against defendants Lockheed Martin, the City of Burbank and Weber, appended to this Consent Decree as Exhibit 1, and any amendments or modifications to that consent decree.

"Future Basin-wide Response Costs" shall mean all Basin-wide Response Costs incurred or paid by EPA after September 30, 1995 or incurred or paid by the State after March 31, 1996.

"Future Site-Specific Response Costs" shall mean all types of costs described in the definition of Basin-wide Response Costs, (e.g., payroll costs) above, incurred or paid by the United States after the Certification of Completion issues with respect to the First Consent Decree, or by the State after March 31, 1996, with regard to Burbank Operable Unit-specific response actions.

"Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

"Los Angeles Department of Water and Power" or "LADWP" shall mean the department of the City of Los Angeles, and any successor agencies or departments, with which EPA has entered into cooperative agreements for the performance of the Basin-wide Remedial Investigation and Feasibility Study for the San Fernando Valley Superfund sites.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

"Operation and Maintenance" or "O&M" or "O&M Activities" shall mean the activities required to operate, maintain and monitor the effectiveness of the interim remedial action as required under the Operation and Maintenance Plan(s) approved or



developed by EPA in conformance with this Consent Decree, UAO 92-12, the Second Stage O&M Work Plan to be developed under this Consent Decree, and the Second Stage Statement of Work attached as Appendix 4 to this Consent Decree.

"O&M Trust Account" shall mean the trust account which Lockheed Martin shall be required to establish pursuant to Section XIV (Funding of Response Activities), Paragraph D of this Consent Decree.

"Operations and Maintenance Contractor" or "O&M Contractor" shall mean the principal contractor retained by the Settling Work Defendant to perform the O&M Activities. The O&M Contractor shall, inter alia: (1) provide the staff to operate and maintain the Plant Facilities; (2) conduct the day-to-day physical tasks of operating the Plant Facilities; (3) perform routine water quality monitoring; (4) physically perform the routine and non-routine maintenance of the Plant Facilities; and (5) maintain the daily operational records of the Plant Facilities.

"Owner Settling Defendants" shall mean the Settling Defendants listed in Appendix 2.

"Paragraph" shall mean a portion of this Consent Decree or the First Consent Decree identified by an Arabic numeral or an upper case letter.

"Parties" shall mean the United States, the State of California DTSC and the Settling Defendants.

"Past Basin-wide Response Costs" shall mean all Basin-wide Response Costs incurred and paid by EPA prior to September 30, 1995, or incurred and paid by the State prior to March 31, 1996.

1 "Past Site-Specific Response Costs" shall mean all costs,  
2 including, but not limited to, all types of costs described in  
3 the definition of Basin-wide Response Costs, (e.g. payroll  
4 costs), above, that the United States incurred and paid with  
5 regard to the Burbank Operable Unit Site prior to the issuance of  
6 the Certification of Completion for the First Consent Decree or  
7 that the State incurred and paid prior to March 31, 1996.

8 "Performance Standards" shall mean those operation and  
9 maintenance standards, standards of control, and other  
10 substantive requirements, criteria or limitations set forth in  
11 the ROD, the First Consent Decree or this Consent Decree, the  
12 Second Stage Statement of Work, Appendix 4 to this Consent  
13 Decree, and any work plan established pursuant to the First  
14 Consent Decree or this Consent Decree. In the event of any  
15 conflict between the First Consent Decree and this Consent  
16 Decree, or between any work plan established pursuant to the  
17 First Consent Decree or this Consent Decree as to the Performance  
18 Standards that apply to the O&M Activities, this Consent Decree  
19 or the work plan established pursuant to this Consent Decree  
20 shall control.

21 "Plaintiffs" shall mean the United States and the State of  
22 California DTSC.

23 "Plant Facilities" shall mean all parts of the  
24 infrastructure necessary to carry out the Burbank Operable Unit  
25 interim remedy, as constructed pursuant to the First Consent  
26 Decree and UAO 92-12, including without limitation the extraction  
27 wellfield, treatment plant, disinfection facility, booster  
28

station, blending water interconnection and pipeline, connecting pipelines for extraction wells to treatment plant, and Blending Facility.

"Regional Water Quality Control Board" or "RWQCB" shall mean the California pollution control agency and any successor agencies or departments of the State of California, which performs ongoing source investigation and source control work in the San Fernando Valley Basin pursuant to a cooperative agreement between EPA and the State Water Resources Control Board.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq., (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Burbank Operable Unit, signed on June 30, 1989, by the Regional Administrator, EPA Region IX, and all attachments thereto, as modified by the First Consent Decree, ESD1 and ESD2.

"Related Settling Defendants" shall mean entities related to Settling Cash Defendants and identified as such in Appendix 1.

"Released Parties" shall mean Settling Defendants and their officers, directors, employees and agents; where the Settling Defendant or other Released Party is a trust, Released Party also shall mean its trustees and successor trustees appointed to carry out the purposes of said trust; where the Settling Defendant or other Released Party is a corporate entity, Released Party also shall mean its corporate successors to potential liability for the Site; and where the Settling Defendant or other Released

1 Party is a partnership, Released Party also shall mean its  
2 partners. "Released Parties" also shall mean the named entities  
3 described in Appendix 1 as Released Parties related to one or  
4 more of the Settling Defendants.

5 "Remedial Action" or "Remedial Action Work" shall mean those  
6 activities, except for Operation and Maintenance, to be  
7 undertaken or which have been undertaken by any of the Settling  
8 Defendants to implement the final plans and specifications  
9 submitted by certain of the Settling Defendants pursuant to the  
10 Remedial Design Work Plan under the First Consent Decree or the  
11 UAO Remedial Design Work Plan under UAO 92-12 and approved by  
12 EPA.

13 "Remedial Action Work Plan" shall mean the documents  
14 submitted by Lockheed Martin and/or the City of Burbank pursuant  
15 to the Statement of Work, Appendix D to the First Consent Decree.

16 "Remedial Design" shall mean those activities which were  
17 undertaken by Lockheed Martin and/or the City of Burbank pursuant  
18 to the Statement of Work ("SOW"), Appendix D to the First Consent  
19 Decree, to develop the final plans and specifications for the  
20 Remedial Action pursuant to the Remedial Design Statement of  
21 Work, or by the UAO Parties pursuant to the Work Schedule,  
22 Appendix A to UAO 92-12, to develop the final plans and  
23 specifications for the Blending Facility.

24 "Remedial Design Statement of Work" or "SOW" shall mean the  
25 document appended as Appendix D to the First Consent Decree.

26 "Remedial Design Work Plan" shall mean the work plans  
27 prepared by Lockheed Martin and/or the City of Burbank pursuant  
28

1 to the SOW, Appendix D to the First Consent Decree, to describe  
2 the final plans and specifications for the Remedial Action.

3 "Second Consent Decree Trust Account" pertains to the trust  
4 account which Lockheed Martin shall be required to establish  
5 pursuant to Section XIV (Funding of Response Activities),  
6 Paragraph C of this Consent Decree.

7 "Second Stage Operation and Maintenance Work Plan" or  
8 "Second Stage O&M Work Plan" shall mean the document prepared  
9 pursuant to Section VI of this Consent Decree (Performance of the  
10 Work), which shall describe certain Settling Defendants'  
11 obligations to operate and maintain, and to dismantle,  
12 decommission or otherwise dispose of the Plant Facilities.

13 "Second Stage Statement of Work" or "Second Stage SOW" shall  
14 mean the statement of work for implementation of the O&M  
15 Activities, attached as Appendix 4 to this Consent Decree.

16 "Section" shall mean a portion of this Consent Decree or the  
17 First Consent Decree identified by a Roman numeral.

18 "Settling Cash Defendants" shall mean those Settling  
19 Defendants who have funded, in whole or in part, the Second  
20 Consent Decree Trust Account described in Section XIV (Funding of  
21 Response Activities), via a settlement with Lockheed Martin in  
22 the action Lockheed Martin Corporation v. Crane Company et al.,  
23 United States District Court, Central District of California,  
24 Case No. CV 94 2717 MRP (Tx). This term includes each of the UAO  
25 Parties.

26 "Settling Defendants" shall mean Lockheed Martin, Settling  
27 Cash Defendants, Related Settling Defendants and Settling Work  
28

1 Defendant.

2 "Settling Work Defendant" shall mean the Settling Defendant  
3 that is obligated to perform the Operation and Maintenance  
4 Activities pursuant to this Consent Decree, except as to Design  
5 Defects as provided in Section VI (Performance of the Work),  
6 capital expenditures that are not integral to the Upstream  
7 Facilities as provided in Section XIV (Funding Obligations),  
8 Paragraph K (Capital Expenditures), and as provided for in  
9 Section XIV (Funding Obligations), Paragraph M (Funding  
10 Obligation for Design Defects). The City of Burbank is the sole  
11 Settling Work Defendant pursuant to this Consent Decree.

12 "Site" shall mean the areal extent of hazardous substance  
13 groundwater contamination that is presently located in the  
14 vicinity of the Burbank well field and includes any areas to  
15 which and from which such hazardous substance groundwater  
16 contamination migrates.

17 "State" shall mean the Department of Toxic Substances  
18 Control and any successor agencies or departments of the State.

19 "State Water Resources Control Board" or "SWRCB" shall mean  
20 the California pollution control agency and any successor  
21 agencies or departments of the State of California, with which  
22 EPA has entered into a series of cooperative agreements for the  
23 ongoing source identification and source control in the Basin  
24 conducted by the RWQCB.

25 "Statement of Work" or "SOW" shall mean the statement of  
26 work for implementation of the Remedial Action, and the first two  
27 years of Operation and Maintenance at the Site, as set forth in  
28

Appendix D to the First Consent Decree and any modifications made pursuant to the First Consent Decree.

"Supervising Contractor" shall mean the principal contractor retained or otherwise selected by the Settling Work Defendant, and approved by EPA, to (1) develop the Second Stage O&M Work Plan; (2) prepare the Project Time Line and Staffing Plan required by Section VI, Paragraph C.8 of this Consent Decree; (3) prepare bid documents to select the O&M Contractor; and (4) conduct periodic oversight, including engineering oversight of the O&M Contractor, and submit reports on such periodic oversight to EPA.

"UAO 92-12" shall mean the unilateral administrative order executed by EPA on March 26, 1992 as amended by a letter of April 28, 1992, from Jeffrey Zelikson to the UAO Parties, appended as Exhibit 2 to this Consent Decree.

"UAO Parties" shall mean the Respondents as defined in Section VII.V of UAO 92-12: Aeroquip Corporation, Crane Company, Inc., Janco Corporation, Sargent Industries, Incorporated, Antonini Family Trust, and Ocean Technology, Incorporated.

"UAO Remedial Action Work Plan" shall mean the document submitted by the UAO Parties pursuant to Attachment A to UAO 92-12.

"UAO Remedial Design" shall mean those activities which were undertaken by the recipients of UAO 92-12 to develop the final plans and specifications for the Blending Facility pursuant to Attachment A to UAO 92-12.

"UAO Remedial Design Statement of Work" or "UAO SOW" shall

mean the remedial design document prepared by the recipients of UAO 92-12 and submitted pursuant to Attachment A to UAO 92-12.

"UAO Remedial Design Work" shall mean the activities to be undertaken by the UAO Parties as defined in Section VII.T of UAO 92-12.

"UAO Remedial Design Work Plan" shall mean the work plan prepared by the UAO Parties pursuant to the Work Schedule, Appendix A to UAO 92-12, to describe the final plans and specifications for the Blending Facility.

"Upstream Facilities" pertains to all facilities designed and constructed by Lockheed Martin pursuant to the First Consent Decree and modifications thereto, and to additional facilities which may be constructed pursuant to this Consent Decree upstream of the Blending Facility as originally constructed by the UAO Parties pursuant to UAO 92-12. "Upstream" pertains to the flow of extracted, treated groundwater beginning with its extraction from the aquifer and generally concluding with the Point of Delivery as "Point of Delivery" is defined in the First Consent Decree.

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous material" under California Health & Safety Code Section 25100 et seq.

"Working Day" shall mean a day other than a Saturday, Sunday



1 or federal or State of California holiday.

2 V. GENERAL PROVISIONS

3 A. Purpose.

4 The purposes of this Consent Decree are to protect public  
5 health, welfare or the environment at the Site by the  
6 implementation of response actions at the Site, to reimburse part  
7 of the Plaintiffs' response costs related to the Site, and to  
8 resolve amicably the claims asserted against Settling Defendants  
9 in the underlying complaints filed in this matter.

10 B. Commitments by Settling Defendants.

11 1. Lockheed Martin, the City of Burbank, the UAO  
12 Parties and the other Settling Cash Defendants shall finance  
13 and/or perform the O&M Activities and other obligations, if any,  
14 described in Sections VI, (Performance of the Work), VII  
15 (Additional Response Actions), VIII (EPA Periodic Review) and XIV  
16 (Funding of Response Activities) herein in accordance with this  
17 Consent Decree and all plans, standards, specifications, and  
18 schedules set forth in or developed or approved by EPA pursuant  
19 to this Consent Decree. Lockheed Martin shall also reimburse the  
20 United States and the State for Past and Future Site-Specific and  
21 Past Basin-wide Response Costs as provided in Section XVII of  
22 this Consent Decree (Reimbursement of Response Costs).

23 2. The obligations of Lockheed Martin, the City of  
24 Burbank, the UAO Parties and the other Settling Cash Defendants  
25 to finance and/or to perform the O&M Activities, and other  
26 obligations, if any, and to pay amounts owed to the United States  
27 and the State under this Consent Decree are several, except with  
28

1 respect to the UAO Parties' obligation to fund response actions  
2 pursuant to Section XIV (Funding of Response Activities),  
3 Paragraph M, which is joint and several as among the UAO Parties,  
4 and the Settling Cash Defendants' obligation to fund response  
5 actions pursuant to Section XIV, Paragraph N, which is joint and  
6 several among the Settling Cash Defendants.

7           3. Compliance With Applicable Law.

8           All response activities undertaken by any Settling  
9 Defendants pursuant to this Consent Decree shall be performed in  
10 accordance with the requirements of all applicable federal and  
11 State of California laws and regulations. Settling Defendants  
12 who perform response activities also shall comply with all  
13 applicable or relevant and appropriate requirements of all  
14 federal and State of California environmental laws as set forth  
15 in the ROD, the Explanations of Significant Differences, the SOW,  
16 the First Consent Decree, this Consent Decree, and any  
17 deliverables developed or approved by EPA under the First Consent  
18 Decree, UAO 92-12 or this Consent Decree. The activities  
19 conducted in accordance with this Consent Decree shall be  
20 considered to be consistent with the NCP.

21           C. Permits.

22           1. As provided in Section 121(e) of CERCLA, 42 U.S.C.  
23 § 9621(e) and Section 300.5 of the NCP, no permit shall be  
24 required for any portion of the O&M Activities conducted entirely  
25 on-site. Where any portion of the O&M Activities requires a  
26 federal or State of California permit or approval, Settling Work  
27 Defendant shall submit timely and complete applications and take  
28

all other reasonable actions necessary to obtain all such permits or approvals. Nothing in this Paragraph shall require the City of Burbank to exercise condemnation, eminent domain, or similar powers or authorities.

2. Settling Work Defendant may seek relief under the provisions of Section XIX (Force Majeure) of this Consent Decree for any delay in the performance of the O&M Activities resulting from a failure to obtain, or a delay in obtaining, any permit required for the O&M Activities.

3. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or State of California statute or regulation.

D. Notice of Obligations to Successors-in-Title.

1. The obligations of each Owner Settling Defendant with respect to the properties it owns which are identified in Appendix 2 to this Consent Decree, and the provision of access under Section X (Access) shall be binding upon such Owner Settling Defendant and any and all persons who subsequently acquire by conveyance any fee ownership interest in such property or portion thereof within the Site, hereinafter "Successors in Title." Each Owner Settling Defendant warrants and represents that to the best of its knowledge and belief, the properties it owns which are identified in Appendix 2 to this Consent Decree are the only properties it owns within the Site, and the United States relies upon such representations with respect to the mutual agreements in this Consent Decree concerning properties within the Site which are owned by any Settling Defendant.

2. In the event of any conveyance of such fee ownership or portion thereof, each such Owner Settling Defendant's obligations under this Consent Decree, including its obligations to provide or secure access pursuant to Section X, shall continue to be met by such Owner Settling Defendant. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of such Owner Settling Defendant to comply with this Consent Decree.

3. Any Owner Settling Defendant and any Successor-in-Title shall, at least thirty (30) days prior to the conveyance of any fee ownership interest in such property, give written notice of this Consent Decree to the grantee. The City shall, at least thirty (30) days prior to the conveyance of any such interest in the real property it owns at 164 West Magnolia Boulevard in the City of Burbank, as depicted in Appendix 8 to this Consent Decree, give written notice of this Consent Decree to the grantee. No later than thirty (30) days after the conveyance of any such interest, such Owner Settling Defendant, Successor-in-Title, or the City shall give written notice to EPA and the State of the conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee, and evidence such action by providing a copy of its notice to the grantee.

E. The obligation to provide notice pursuant to this Section shall terminate upon issuance of the Certification of Completion pursuant to Section XV (Certification of Completion)

of this Consent Decree.

F. In the event of any such conveyance by the City of the property at 164 West Magnolia Boulevard in the City of Burbank, the City's obligations under this Consent Decree shall continue to be met by the City. In no event shall the conveyance of an interest in the property release or otherwise affect the liability of the City to comply with the Consent Decree. Any Successor-in-Title to the real property at 164 West Magnolia Boulevard shall be bound by the provisions of Paragraph D.1 through D.3 of this Section.

VI. PERFORMANCE OF THE WORK

A. Selection of Supervising Contractor.

1. All aspects of the O&M Activities to be performed by Settling Work Defendant pursuant to Sections VI (Performance of the Work), VII (Additional Response Actions), VIII (U.S. EPA Periodic Review), and IX (Quality Assurance, Sampling and Data Analysis) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA after a reasonable opportunity for review and comment by the State. Within one hundred and eighty (180) days after the entry of this Consent Decree, Settling Work Defendant shall notify EPA and the State in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. Settling Work Defendant may submit a list of contractors for pre-qualification prior to engaging in any bidding process. Settling Work Defendant may also propose to directly serve in the role of

( (

1 Supervising Contractor, subject to EPA's review and approval.  
2 EPA will issue a notice of approval or disapproval of the  
3 Supervising Contractor. Upon its approval of the Supervising  
4 Contractor, EPA will issue an authorization to proceed. If at  
5 any time thereafter, Settling Work Defendant proposes to change a  
6 Supervising Contractor, Settling Work Defendant shall give such  
7 notice to EPA and the State and must obtain an authorization to  
8 proceed from EPA, after a reasonable opportunity for review and  
9 comment by the State, before the new Supervising Contractor  
10 performs, directs, supervises or implements any O&M Activities  
11 under this Consent Decree. In addition, if the Supervising  
12 Contractor proposes to subcontract any portion of the  
13 supervision, direction or implementation of the O&M Activities  
14 under this Consent Decree, Settling Work Defendant shall give  
15 such notice to EPA and the State and must obtain an authorization  
16 to proceed from EPA, after a reasonable opportunity for review  
17 and comment by the State, before the subcontractor supervises,  
18 directs, or implements any O&M Activities under this Consent  
19 Decree.

20 2. If EPA disapproves a proposed Supervising  
21 Contractor, EPA will notify Settling Work Defendant in writing.  
22 Settling Work Defendant shall submit to EPA and the State a list  
23 of contractors, including the qualifications of each contractor,  
24 that would be acceptable to it within thirty (30) days of receipt  
25 of EPA's disapproval of the contractor previously proposed. EPA  
26 will provide written notice of the names of any contractor(s)  
27 that it disapproves and an authorization to proceed with respect  
28

to any of the other contractors. Settling Work Defendant may select any contractor from that list that is not disapproved and shall notify EPA and the State of the name of the contractor selected within twenty-one (21) days of EPA's authorization to proceed.

3. If EPA fails to provide written notice of its approval, authorization to proceed or disapproval as provided in this Paragraph, and this failure prevents Settling Work Defendant from meeting one or more deadlines pursuant to this Consent Decree, Settling Work Defendant may seek relief under the provisions of Section XIX (Force Majeure) hereof.

B. Selection of O&M Contractor.

1. The day-to-day conduct of the O&M Activities will be performed by the O&M Contractor as defined in Section IV (Definitions) of this Consent Decree. The selection of the O&M Contractor shall be subject to disapproval by EPA after a reasonable opportunity for review and comment by the State. Within one hundred and eighty (180) days after the System Operation Date for Phase Two of the Remedial Action Work as specified in the First Consent Decree, Settling Work Defendant shall notify EPA and the State in writing of the name, title and qualifications of any contractor proposed to be the O&M Contractor. EPA will issue a notice of approval or disapproval. Upon issuance of a notice of approval, EPA shall issue an authorization to proceed. If at any time thereafter, Settling Work Defendant proposes to change the O&M Contractor, Settling Work Defendant shall give such notice to EPA and the State and

must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the State, before the new O&M Contractor performs, directs, supervises or implements any O&M Activities under this Consent Decree. In addition, if the O&M Contractor proposes to subcontract any portion of O&M Activities under this Consent Decree, Settling Work Defendant shall give such notice to EPA and the State and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the State, before the subcontractor supervises, directs, or implements any O&M Activities under this Consent Decree.

2. EPA's approval or disapproval of Settling Work Defendant's selection of an O&M Contractor shall be governed by the procedures set forth in Section VI (Performance of the Work), Paragraphs A.2 and A.3 of this Consent Decree.

C. Completion of the Response Action.

1. Under Section VII of the First Consent Decree, Lockheed Martin, Weber and the City of Burbank submitted to EPA, inter alia, a work plan for the Remedial Design ("Remedial Design Work Plan"), a work plan for the Remedial Action at the Site ("Remedial Action Work Plan") and a plan for the first two years of the Operation & Maintenance ("O&M Work Plan") of the interim remedy. The Remedial Design, Remedial Action and O&M Work Plans provided for design and implementation of part of the interim remedy set forth in the ROD in accordance with the SOW and, upon approval by EPA, were incorporated into and became enforceable under the First Consent Decree. Under Section VII, Paragraph H.1



1 of the First Consent Decree, the City of Burbank agreed to accept  
2 the treated, blended groundwater for distribution to the public  
3 water supply.

4 2. Lockheed Martin, Weber and the City of Burbank are  
5 performing their obligations under the First Consent Decree.  
6 Unless otherwise stated in this Consent Decree, these parties'  
7 obligations under the First Consent Decree are not altered in any  
8 manner by this Consent Decree.

9 3. Under Section X of UAO 92-12, the UAO Parties were  
10 required to submit, inter alia, a Remedial Design Work Plan and  
11 Remedial Action Work Plan for the design, construction and  
12 operation of the Blending Facility.

13 4. The UAO Parties are performing their obligations  
14 under UAO 92-12. Unless otherwise stated in this Consent Decree,  
15 these parties' obligations under UAO 92-12 are not altered in any  
16 manner by this Consent Decree. The UAO Parties agree to perform  
17 and complete their obligations under UAO 92-12.

18 5. Settling Work Defendant shall begin conducting the  
19 Operation and Maintenance of the Plant Facilities, beginning on  
20 the Date of Commencement and concluding upon EPA's issuance of a  
21 Certification of Completion in accordance with Section XV  
22 (Certification of Completion) of this Consent Decree.  
23 Specifically, Settling Work Defendant shall operate and maintain  
24 the Plant Facilities and monitor the effectiveness of such  
25 facilities, for the duration of the time required by the ROD.

26 6. Lockheed Martin shall perform all work necessary to  
27 dismantle and decommission the Plant Facilities upon EPA's  
28

determination pursuant to Paragraph A.1 of Section XV (Certification of Completion) of this Consent Decree that dismantling and/or decommissioning is required.

7. As provided in Section XIV (Funding of Response Activities), Paragraphs D and M, Lockheed Martin shall fund the O&M Activities for the Upstream Facilities and any response activities required because of a Design Defect in the Upstream Facilities. As is also provided in Section XIV (Funding of Response Activities), Paragraph C, the Settling Cash Defendants shall fund the Second Consent Decree Trust Account according to their respective shares as set forth in Appendix 6 to this Consent Decree, which is submitted under seal. As provided in Section XIV, Paragraph M.2(c)(2), the UAO Parties also shall fund any response activities required because of a Design Defect in the Blending Facility. Lockheed Martin, the City of Burbank, and the Settling Cash Defendants shall fund any response activities required because of an earthquake or Uninsurable Force Majeure Event, as defined in Section XIV, Paragraph N, as provided in that Paragraph. The City of Burbank shall fund the Operation and Maintenance of the Downstream Facilities except insofar as the UAO Parties may be required to fund such activities because of a Design Defect, or Lockheed Martin or the Settling Cash Defendants may be required to fund such activities because of an earthquake or Uninsurable Force Majeure Event.

8. Within one year after the Effective Date of this Consent Decree, as defined in Section XXVIII (Effective Date), Settling Work Defendant shall submit to EPA:

1                   a. A Staffing Plan indicating lines of  
2 responsibility and communication for day-to-day operations, and  
3 designating the person or persons responsible for oversight of  
4 the O&M Activities on behalf of Settling Work Defendant. Such  
5 person or persons may be a member or members of Settling Work  
6 Defendant's staff or a member of Settling Work Defendant's  
7 Supervising or O&M Contractors' staffs. Settling Work Defendant  
8 shall also designate a single contact for communications with EPA  
9 for the O&M Activities from the Effective Date of this Consent  
10 Decree, as defined in Section XXVIII (Effective Date), through  
11 completion of the Remedial Action.

12                   b. A Time Line and Schedule describing the timing  
13 of the O&M Activities which will be carried out during the period  
14 of time covered by the First Consent Decree, including but not  
15 limited to any transitions in operations responsibility to take  
16 place between Lockheed Martin and the City of Burbank prior to or  
17 at the Date of Commencement.

18                   9. Within two (2) years after the Effective Date of  
19 this Consent Decree, as defined in Section XXVIII (Effective  
20 Date), the Settling Work Defendant shall submit to EPA a Second  
21 Stage O&M Work Plan describing in detail the tasks to be  
22 performed to operate and maintain the Plant Facilities.

23                   D. Settling Defendants acknowledge and agree that nothing  
24 in the First Consent Decree, this Consent Decree, the Second  
25 Stage O&M Work Plan or in any plan approved pursuant to the First  
26 Consent Decree or this Consent Decree constitutes a warranty or  
27 representation of any kind by Plaintiffs that compliance with the  
28

work requirements set forth in the O&M Second Stage Work Plan and completion of the O&M Activities will achieve the Performance Standards. Settling Work Defendant's compliance with the requirements of Section VI (Performance of the Work) shall not foreclose Plaintiffs from seeking achievement of all requirements of the ROD including, but not limited to, the applicable Performance Standards.

E. Settling Work Defendant shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

1. The Settling Work Defendant shall include in the written notification the following information, where available:

- (1) the name and location of the facility to which the Waste Material(s) are to be shipped;
- (2) the type and quantity of the Waste Material to be shipped;
- (3) the expected schedule for the shipment of the Waste Material; and
- (4) the method of transportation.

The Settling Work Defendant shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

2. The Settling Work Defendant shall provide the information required by this Section, Paragraph E.1 as soon as practicable and before the Waste Material is actually shipped.

F. Miscellaneous Standards of Control.

1. Settling Work Defendant may discharge extracted water to any offsite conveyance(s) leading to any Publicly Owned Treatment Works ("POTW") or to any off-site conveyance(s) leading to any water(s) of the United States for a period of up to five (not necessarily consecutive) days during any month, if the water is not accepted by the City and cannot be vended, provided that the following requirements are met for such discharge:

a. All substantive and procedural requirements applicable to such discharge at the time of such discharge shall be met, including any limits on the quantity of water to be discharged;

b. The total combined amount of any discharge(s) of extracted water to any off-site conveyance(s) leading to any POTW(s) at any time shall not exceed 6,000 gpm; and

c. The total combined amount of extracted water discharged to any off-site conveyance(s) leading to any POTW(s) and to any off-site conveyance(s) leading to any water(s) of the United States at any time shall not exceed 9,000 gpm.

Nothing in this Paragraph shall excuse Settling Work Defendant from stipulated penalties for failure to comply with any other requirements of this Consent Decree.

2. Settling Work Defendant may discharge development and purge water from wells to any off-site conveyance(s) leading

to any POTW or to any offsite conveyance(s) leading to any water(s) of the United States, provided that any such discharge is in compliance with all substantive and procedural requirements applicable to such discharge at the time of such discharge.

Water discharged pursuant to this Section, Paragraph F.2 shall not be included in the limits on the amount of water allowed to be discharged pursuant to this Section, Paragraph F.1.

3. Any water containing hazardous constituents and stored onsite for more than ninety (90) days shall be handled as a hazardous waste onsite. Such storage shall be accomplished in compliance with the substantive requirements of 40 C.F.R. Part 264, Subparts I and J, and 22 California Code of Regulations, Chapter 30, Article 24 ("Use and Management of Containers") and Article 25 ("Tank Systems"). These requirements are applicable or relevant and appropriate requirements for the O&M Activities.

4. With respect to requirements for the operation of the groundwater treatment plant's VOC-stripper (i.e., air stripper with vapor phase granulated activated carbon absorption units), South Coast Air Quality Management District ("SCAQMD") Rule 1167 was rescinded in December of 1988 and Settling Work Defendant is not required to comply with this Rule despite any other language in this Consent Decree. Furthermore, some of the regulations cited in the ROD have been changed by the SCAQMD. The only requirements of the SCAQMD that Settling Work Defendant is required to comply with in performing Work onsite are the substantive requirements of the following applicable or relevant and appropriate requirements for the groundwater treatment plant

VOC stripper:

a. SCAQMD Regulation XIII, as amended through June 28, 1990; and

b. SCAQMD Rule 1401, as adopted on June 1, 1990.

G. System Operation Minimum Standards. The work to be performed shall achieve the Performance Standards and shall, at a minimum, achieve the following standards during system operation:

1. All groundwater to be extracted shall be treated by Settling Work Defendant to a level such that the following chemicals do not exceed their respective MCL:

Chemical

MCL

PCE

5.0 micrograms/liter

TCE

5.0 micrograms/liter

2. All treated groundwater shall be disinfected and then blended by the Settling Work Defendant to meet all legal requirements for introduction of the blended water into the City's water supply system, including, but not limited to, the MCL for nitrate.

3. Settling Work Defendant shall operate and maintain the facilities it is required to operate and maintain in such a way as to ensure that failure to attain drinking water standards promulgated and in effect on the date of delivery (other than the MCL for nitrate), regardless of when any such standards were promulgated, shall result in the immediate, and, in all cases where possible, automatic shut-down of the groundwater treatment plant and water delivery system. Such a shut-down shall not, in and of itself, release Settling Work Defendant from any other

1 requirement of this Consent Decree and specifically shall not, in  
2 and of itself, affect the requirement that Settling Work  
3 Defendant pay stipulated penalties for failure to extract and  
4 deliver water in the amounts and of the quality required by  
5 Paragraphs G.3 and H.1 of this Section.

6 H. Extraction Requirements.

7 1. The Settling Work Defendant shall extract and treat  
8 an annual average of 9,000 g.p.m. of contaminated groundwater  
9 except as otherwise provided in this Section. Settling Work  
10 Defendant shall purvey all treated groundwater which satisfies  
11 the treatment standards established by Paragraphs G and H of this  
12 Section up to an amount which, when blended with the blending  
13 water, will meet the City's Water Demand (as defined in the  
14 Second Stage Statement of Work) without resulting in a nitrate  
15 concentration in the blended water that exceeds the promulgated  
16 MCL for nitrate in effect at that time; provided however that, in  
17 order to maximize the Settling Work Defendant's use of treated  
18 groundwater while providing a margin of safety in achieving  
19 compliance with the MCL for nitrate, the Settling Work Defendant  
20 shall be deemed to be in compliance with this Paragraph if it

21 a. Achieves at all times a level of nitrate in  
22 the blended water which is no greater than eighty-nine percent  
23 (89%) of the promulgated MCL for nitrate that is in effect at the  
24 time of the blending;

25 b. Extracts contaminated groundwater at an annual  
26 average rate of 9,000 g.p.m. at all times when the nitrate level  
27 in the extracted groundwater does not exceed 50 mg/l as nitrate;  
28



1 and

2 c. Maximizes the use of the extracted groundwater  
3 to the degree possible when the nitrate level in the extracted  
4 groundwater exceeds 50 mg/l as nitrate.

5 2. Notwithstanding the requirements of Paragraph H.1  
6 of this Section, the Settling Work Defendant shall not be charged  
7 a stipulated penalty for failure to meet a nitrate level  
8 specified in that Paragraph except where the nitrate  
9 concentrations of the blended water exceed the promulgated MCL  
10 for nitrate in effect at the time of the blending.

11 3. Settling Work Defendant shall maximize the amount  
12 of extraction from the Phase I and Phase II extraction wells and  
13 shall preferentially extract groundwater from these wells to meet  
14 its Water Demand as limited by the amount of water the Settling  
15 Work Defendant is required to accept pursuant to Paragraph H.1 of  
16 this Section.

17 4. Settling Work Defendant shall extract, treat and  
18 use its best efforts to vend or discharge, in compliance with  
19 Paragraphs F and G of this Section, additional groundwater such  
20 that the total amount of water extracted, treated and then  
21 delivered by the Settling Work Defendant, or vended or discharged  
22 by the Settling Work Defendant, equals or exceeds 9,000 g.p.m. on  
23 an annual average. Extraction from the City's liquid phase GAC  
24 wellfield located at 164 West Magnolia Boulevard, Burbank,  
25 California, as depicted in the plot plan attached as Appendix 8  
26 to this Consent Decree, may be counted towards Settling Work  
27 Defendant's achievement of the 9,000 g.p.m. annual average  
28

1 extraction requirement. Settling Work Defendant shall be subject  
2 to stipulated penalties if it fails to achieve the 9,000 g.p.m.  
3 annual average extraction requirement, unless such failure is due  
4 to nitrate levels in the extracted groundwater which exceed 50  
5 mg/l as nitrate.

6 I. Settling Work Defendant shall not be obligated to meet  
7 the requirements of this Section, Paragraph H.1 if a new drinking  
8 water standard is promulgated after March 1, 1997, EPA has  
9 identified such standard as applicable or relevant and  
10 appropriate for the treated groundwater and necessary to protect  
11 public health or the environment and such standard cannot be met  
12 without modifying the facilities constructed pursuant to Section  
13 VII, Subpart A of the First Consent Decree or changing their  
14 operation.

15 VII. ADDITIONAL RESPONSE ACTIONS

16 A. In the event that EPA determines or the Settling Work  
17 Defendant proposes that additional response actions are necessary  
18 to meet the Performance Standards or to carry out the interim  
19 remedy selected in the ROD, notification of such additional  
20 response actions shall be provided to EPA and to each of the  
21 Settling Defendants.

22 B. Within thirty (30) days of receipt of notice from EPA or  
23 Settling Work Defendant pursuant to Paragraph A of this Section  
24 that additional response actions are necessary (or such longer  
25 time as may be specified by EPA), Settling Work Defendant shall  
26 submit for approval by EPA, after reasonable opportunity for  
27 review and comment by the State, a work plan for the additional  
28

1 response actions. The plan shall conform to the applicable  
2 requirements under law or EPA guidance. Upon approval of the  
3 plan pursuant to Section XII (Submissions Requiring Agency  
4 Approval), Settling Work Defendant shall implement the plan for  
5 additional response actions in accordance with the schedule  
6 contained therein.

7 C. Any additional response actions that Settling Work  
8 Defendant proposes are necessary to meet the Performance  
9 Standards or to carry out the interim remedy selected in the ROD  
10 shall be subject to approval by EPA, after reasonable opportunity  
11 for review and comment by the State, and, if authorized by EPA,  
12 shall be completed by Settling Work Defendant in accordance with  
13 plans, specifications, and schedules approved or established by  
14 EPA pursuant to Section XII (Submissions Requiring Agency  
15 Approval).

16 D. Any Settling Defendant required to fund, perform, or  
17 operate and maintain completed additional response actions may  
18 invoke the procedures set forth in Section XX (Dispute  
19 Resolution) to dispute EPA's determination that additional  
20 response actions are necessary to meet the Performance Standards  
21 or to carry out the interim remedy selected in the ROD. Such a  
22 dispute shall be resolved pursuant to Section XX (Dispute  
23 Resolution), Paragraph F of this Consent Decree.

24 E. The United States and the State reserve all rights  
25 against Settling Defendants, pursuant to Paragraph E of Section  
26 XXII (Covenants Not to Sue by Plaintiffs), if any new  
27 requirement(s) are promulgated or if any requirement(s)  
28

promulgated on or before the Effective Date of this Consent Decree as defined in Section XXVIII (Effective Date) subsequently are changed and such requirement(s) are determined by EPA to be both (a) applicable or relevant and appropriate and (b) necessary to insure that the interim remedy is protective of human health and the environment and such standard cannot be met without modifying the Plant Facilities or significantly changing their operation.

F. If EPA determines that reinjection capacity is necessary for the remedy to meet the Performance Standards or to protect human health or the environment, the development of such capacity shall not be considered an additional response action under this Section. The United States and the State reserve all rights against Settling Defendants as provided in Paragraph E of Section XXII (Covenants Not to Sue by Plaintiffs) concerning installation of such capacity.

#### VIII. EPA PERIODIC REVIEW

A. Settling Work Defendant shall conduct any studies and investigations as requested by EPA in order to permit EPA to conduct reviews at least every five years as required by Section 121(c), 42 U.S.C. § 9621(c) of CERCLA and any applicable regulations.

B. Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. §§ 9613(k)(2) or 9617, the public will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c), of CERCLA, 42 U.S.C.

1 § 9621(c), and to submit written comments for the record during  
2 the public comment period. After the period for submission of  
3 written comments is closed, the Regional Administrator, EPA  
4 Region IX, or his/her delegate will determine in writing whether  
5 further response actions are appropriate.

6 C. The United States reserves the right pursuant to Section  
7 XXII, Paragraphs A and E of this Consent Decree (Covenants Not to  
8 Sue by Plaintiffs) to institute proceedings in this action or in  
9 a new action, or to issue an administrative order seeking to  
10 compel Settling Defendants or any of them (1) to perform further  
11 response actions relating to the Site or (2) to reimburse the  
12 United States for additional costs of response if the Regional  
13 Administrator, EPA Region IX, or his/her delegate determines that  
14 information received, in whole or in part, during the review  
15 conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C.  
16 § 9621(c), indicates that the Remedial Action or the O&M  
17 Activities are not protective of human health or the  
18 environment.

19 IX. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

20 A. Settling Work Defendant shall use quality assurance,  
21 quality control, and chain of custody procedures for all  
22 treatability, design, compliance and monitoring samples in  
23 accordance with EPA's "Interim Guidelines and Specifications For  
24 Preparing Quality Assurance Project Plans," December 1980, (QAMS-  
25 005/80); "Data Quality Objective Guidance," (EPA/540/G87/003 and  
26 004); "EPA NEIC Policies and Procedures Manual," May 1978,  
27 revised November 1984, (EPA 330/9-78-001-R); and subsequent  
28

amendments to such guidelines upon notification by EPA to Settling Work Defendant of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Work Defendant shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the Second Stage O&M Work Plan, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Consent Decree. Settling Work Defendant shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Work Defendant in implementing this Consent Decree. In addition, Settling Work Defendant shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Work Defendant shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Consent Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation

1 of this Consent Decree. Settling Work Defendant shall ensure  
2 that all laboratories it uses for analysis of samples taken  
3 pursuant to this Consent Decree participate in an EPA or EPA-  
4 equivalent QA/QC program.

5 B. Upon request, Settling Work Defendant shall allow split  
6 or duplicate samples to be taken by EPA and the State or their  
7 authorized representatives. Settling Work Defendant shall  
8 include in the O&M Second Stage Work Plan a schedule of routine,  
9 pre-scheduled sampling events, for example those required by the  
10 California Department of Health Services under the operating  
11 permit for the Plant Facilities, or under existing regulations.  
12 As regulations or permit conditions change and affect this  
13 schedule, Settling Work Defendant shall submit revised schedules  
14 as amendments to the Second Stage O&M Work Plan. For  
15 non-routine, non-emergency sampling events, for example, an  
16 unscheduled performance evaluation study of the Plant Facilities,  
17 Settling Work Defendant shall notify EPA and the State not less  
18 than fourteen (14) days in advance of any sample collection  
19 activity unless shorter notice is agreed to by EPA. In addition,  
20 EPA and the State shall have the right to take any additional  
21 samples that EPA or the State deem necessary. Upon request, EPA  
22 and the State shall allow any Settling Defendant to take split or  
23 duplicate samples of any samples either Plaintiff takes as part  
24 of either Plaintiff's oversight of the implementation of the O&M  
25 activities.

26 C. Settling Work Defendant shall submit to EPA three (3)  
27 copies each of the results of all sampling and/or tests  
28

1 performed, or data gathered pursuant to the implementation of  
2 this Consent Decree unless EPA agrees otherwise. Such results  
3 and other data may be submitted as part of the progress reports  
4 required pursuant to Paragraph A.1 of Section XI (Reporting  
5 Requirements). EPA will provide to Settling Work Defendant's  
6 Project Coordinator results of analyses conducted by EPA pursuant  
7 to Section IX, (Quality Assurance, Sampling and Data Analysis),  
8 Paragraph B of this Consent Decree.

9 D. Notwithstanding any provision of this Consent Decree,  
10 the United States and the State hereby retain all of their  
11 information gathering and inspection authorities and rights,  
12 including enforcement actions related thereto, under CERCLA, RCRA  
13 and any other applicable statutes or regulations.

14 E. Settling Work Defendant may deviate from EPA guidance on  
15 Quality Assurance/Quality Control ("QA/QC") as referenced in  
16 Section IX, Paragraph A of this Consent Decree under the  
17 following circumstances. For compliance monitoring required  
18 under federal and/or State of California drinking water  
19 regulations, Settling Work Defendant may follow QA/QC procedures  
20 required under those regulations so long as EPA determines that  
21 such procedures are equally protective of human health and the  
22 environment as EPA QA/QC procedures.

23 X. ACCESS

24 A. Commencing upon the Effective Date of this Consent  
25 Decree and terminating upon issuance of a final ROD for the Site,  
26 each Owner Settling Defendant agrees to provide the United  
27 States, the State, and their representatives, including EPA and  
28



1 its contractors, access at all reasonable times to real property  
2 to which EPA informs such Owner Settling Defendant access is  
3 required for the implementation of this Consent Decree, to the  
4 extent access to the property is controlled by such Owner  
5 Settling Defendant, for the purposes of conducting any activity  
6 related to this Consent Decree including, but not limited to:

- 7 a. Monitoring the O&M Activities;
- 8 b. Verifying any data or information submitted to the  
9 United States;
- 10 c. Conducting investigations relating to contamination  
11 at or near the Site;
- 12 d. Obtaining samples;
- 13 e. Assessing the need for, planning, or implementing  
14 additional response actions at or near the Site;
- 15 f. Inspecting and copying records, operating logs,  
16 contracts, or other documents maintained or generated by Settling  
17 Defendants or their agents, pursuant to Section XXV (Access to  
18 Information); and
- 19 g. Assessing Settling Defendants' compliance with this  
20 Consent Decree.

21 B. Except to the extent Plaintiffs deem necessary to  
22 protect human health or the environment, Plaintiffs will provide  
23 the affected Settling Defendant with twenty-four (24) hours  
24 notice prior to entry to properties accessed pursuant to this  
25 Consent Decree. In exercising their rights to access under this  
26 Paragraph, Plaintiffs shall to the extent practicable not  
27 unreasonably interfere with Settling Defendants' business or  
28

municipal activities. However, nothing in this Paragraph shall provide Settling Defendants with any claim or cause of action whatsoever against Plaintiffs, including without limitation any claim for injunctive relief. In addition, it shall not constitute an unreasonable interference for Plaintiffs to take any action they deem necessary to avoid endangerment to human health or the environment or to respond to an emergency.

C. To the extent that any other real property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Owner Settling Defendants, Settling Work Defendant shall use best efforts to secure from such persons access for Settling Work Defendant, as well as for the United States and the State and their representatives, including, but not limited to, their contractors, as necessary to effectuate this Consent Decree. For purposes of this Paragraph, "best efforts" may include the payment of reasonable sums of money in consideration of access. "Best efforts" does not include the exercise of eminent domain, condemnation or similar authorities. Settling Defendants shall coordinate and cooperate with Settling Work Defendant as appropriate and necessary to obtain such access to properties which they own, control, or to which they otherwise have access. If any access required to effectuate this Consent Decree is not obtained within forty-five (45) days of the date of lodging of this Consent Decree, or within forty-five (45) days of the date EPA notifies the Settling Work Defendant in writing that additional access beyond that previously secured is necessary,

1 Settling Work Defendant shall promptly notify the United States,  
2 and shall include in that notification a summary of the steps  
3 Settling Work Defendant, or other Settling Defendants in  
4 coordination and cooperation with Settling Work Defendant, have  
5 taken pursuant to this Section to attempt to obtain access. The  
6 United States or the State may, as either deems appropriate,  
7 assist Settling Work Defendant in obtaining access. Lockheed  
8 Martin shall reimburse the United States or the State, in  
9 accordance with the procedures in Section XVII (Reimbursement of  
10 Response Costs), for all costs incurred by the United States or  
11 the State in obtaining access pursuant to this Section.

12 D. Notwithstanding any provision of this Consent Decree,  
13 the United States and the State retain all of their access  
14 authorities and rights, including enforcement authorities related  
15 thereto, under CERCLA, RCRA and any other applicable statute or  
16 regulations.

17 XI. REPORTING REQUIREMENTS

18 A. In addition to any other requirement of this Consent  
19 Decree, Settling Work Defendant shall submit to EPA and the  
20 State, with the frequency described below, three (3) copies each  
21 of written progress reports that: (a) describe the actions which  
22 have been taken toward achieving compliance with this Consent  
23 Decree during the previous reporting period; (b) include a summary  
24 of all results of sampling and tests and all other data received  
25 or generated by Settling Work Defendant or its contractors or  
26 agents in the previous reporting period; (c) identify all work  
27 plans, plans and other deliverables required by this Consent  
28

Decree completed and submitted during the previous period; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the subsequent two reporting periods, (e) include information regarding unresolved delays encountered or anticipated that may affect the future schedule for implementation of the O&M Activities, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the O&M Second Stage Work Plan or other schedules that Settling Work Defendant has proposed to EPA or that have been approved by EPA; (g) describe all activities undertaken in support of the Community Relations Plan during the period dating from the submission of the last progress report and those to be undertaken prior to the submission of the next progress report, and (h) report any out-of-state shipments of Waste Materials that occurred during the previous reporting period. Settling Work Defendant shall submit these progress reports to EPA with the frequency described below, commencing from the Effective Date of this Consent Decree until EPA notifies the Settling Work Defendant pursuant to Paragraph A.5 of Section XV (Certification of Completion). If requested by EPA or the State, Settling Work Defendant shall also provide briefings for EPA and the State to discuss the progress of the work.

1. The progress reports shall be submitted with the following frequency:

a. Semi-annually from the Effective Date of this Consent Decree until one year prior to the Date of Commencement;

1                   b. Quarterly during the year prior to the Date of  
2 Commencement;

3                   c. Monthly commencing with the Date of  
4 Commencement for a period of three years ("the Monthly Reporting  
5 Requirement").

6                   d. Quarterly from completion of the Monthly  
7 Reporting Requirement until EPA notifies the Settling Work  
8 Defendant pursuant to Paragraph A.5 of Section XV (Certification  
9 of Completion) of this Consent Decree.

10               2. The Settling Work Defendant shall notify EPA of  
11 any change in the schedule described in the progress reports for  
12 the performance of any activity, including, but not limited to,  
13 data collection and implementation of work plans, no later than  
14 seven (7) days prior to the performance of the activity.

15               B. Upon the occurrence of any event during performance of  
16 the O&M Activities that Settling Work Defendant is required to  
17 report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or  
18 Section 304 of the Emergency Planning and Community Right-to-Know  
19 Act (EPCRA), 42 U.S.C. § 11004, Settling Work Defendant shall  
20 within twenty-four (24) hours of the onset of such event orally  
21 notify the EPA Project Coordinator or the Alternate EPA Project  
22 Coordinator (in the event of the unavailability of the EPA  
23 Project Coordinator), or, in the event that neither the EPA  
24 Project Coordinator or Alternate EPA Project Coordinator is  
25 available, the Emergency Response Section, Region IX, United  
26 States Environmental Protection Agency. These reporting  
27 requirements are in addition to the reporting required by CERCLA  
28

1 Section 103, 42 U.S.C. § 9603 or EPCRA Section 304, 42 U.S.C.  
2 § 11004.

3 C. Within twenty (20) days of the onset of such an event,  
4 Settling Work Defendant shall furnish to Plaintiffs a written  
5 report, signed by the Settling Work Defendant's Project  
6 Coordinator, setting forth the events which occurred and the  
7 measures taken, and to be taken, in response thereto. Within  
8 thirty (30) days of the conclusion of such an event, Settling  
9 Work Defendant shall submit a report setting forth all actions  
10 taken in response thereto.

11 D. Settling Work Defendant shall submit three (3) copies of  
12 all plans, reports, and data required by the Second Stage O&M  
13 Work Plan to EPA. Settling Work Defendant shall simultaneously  
14 submit three (3) copies of all such plans, reports and data to  
15 the State.

16 E. All reports and other documents submitted by Settling  
17 Work Defendant to EPA (other than the progress reports referred  
18 to above) which purport to document Settling Work Defendant's  
19 compliance with the terms of this Consent Decree shall be signed  
20 by an authorized representative of the Settling Work Defendant.

21 F. Settling Work Defendant shall immediately notify EPA of  
22 any failure to attain MCLs or State of California Action Levels  
23 ("SALs") when such failures occur at a point of compliance as  
24 defined under federal or State of California drinking water  
25 regulations.

1  
2 XII. SUBMISSIONS REQUIRING AGENCY APPROVAL

3 A. After review of the Second Stage O&M Work Plan or other  
4 item which is required to be submitted for approval pursuant to  
5 this Consent Decree, EPA, after reasonable opportunity for review  
6 and comment by the State, shall: (1) approve, in whole or in  
7 part, the submission; (2) approve the submission upon specified  
8 conditions; (3) modify the submission to cure the deficiencies;  
9 (4) disapprove, in whole or in part, the submission, directing  
10 that the Settling Work Defendant modify the submission; or (5)  
11 any combination of the above.

12 B. In the event of approval, approval upon conditions,  
13 modification, disapproval or partial disapproval by EPA, pursuant  
14 to this Section, Paragraph A, Settling Work Defendant shall  
15 proceed to take any action required by the Second Stage O&M Work  
16 Plan or other item, as approved or modified by EPA, subject only  
17 to its right to invoke the dispute resolution procedures set  
18 forth in Section XX (Dispute Resolution) with respect to the  
19 modifications or conditions made by EPA. However, in the event  
20 that EPA modifies the submission pursuant to this Section,  
21 Paragraphs A and D, to cure continued deficiencies, and the  
22 submission has a material defect not cured upon resubmittal, EPA  
23 retains its right to impose stipulated penalties, as provided in  
24 Section XXI (Stipulated Penalties), retroactive to the date of  
25 the initial submittal.

26 C. Upon receipt of a notice of disapproval of a  
27 resubmitted Second Stage O&M Work Plan or other item, or portion  
28

1 thereof, pursuant to this Section, Paragraph C or D, Settling  
2 Work Defendant shall, within fourteen (14) days or such other  
3 time as specified by EPA in such notice, correct the remaining  
4 deficiencies and resubmit the Second Stage O&M Work Plan or other  
5 item for approval. Any disapproval by EPA shall include an  
6 explanation of why the deliverable is inadequate. If the  
7 resubmitted deliverable is inadequate, Settling Work Defendant  
8 shall be deemed to be in violation of this Consent Decree. Any  
9 stipulated penalties applicable to the submission, as provided in  
10 Section XXI (Stipulated Penalties), shall accrue during the  
11 fourteen-day (14-day) period or otherwise specified period but  
12 shall not be payable unless the resubmission is disapproved or  
13 modified due to a material defect as provided in this Section,  
14 Paragraph E.

15 Notwithstanding the receipt of an initial notice of  
16 disapproval pursuant to this Section, Paragraph A, D or E,  
17 Settling Work Defendant shall proceed, at the direction of EPA,  
18 to take any action required by any non-deficient portion of the  
19 submission. Implementation of any non-deficient portion of a  
20 submission shall not relieve Settling Work Defendant of any  
21 liability for stipulated penalties under Section XXI (Stipulated  
22 Penalties).

23 D. In the event that a resubmitted Second Stage O&M Work  
24 Plan or other item, or portion thereof, is disapproved by EPA,  
25 EPA may again require the Settling Work Defendant to correct the  
26 deficiencies, in accordance with the preceding Paragraphs. EPA  
27 also retains the right to amend or develop the Second Stage O&M  
28



1 Work Plan or other item. Settling Work Defendant shall implement  
2 the Second Stage O&M Work Plan or other item as amended or  
3 developed by EPA, subject only to its right to invoke the  
4 procedures set forth in Section XX (Dispute Resolution).

5 E. If upon resubmission, the Second Stage O&M Work Plan or  
6 other item is disapproved or modified by EPA due to a material  
7 defect, Settling Work Defendant shall be deemed to have failed to  
8 submit the Second Stage O&M Work Plan or other item timely and  
9 adequately unless Settling Work Defendant invokes the dispute  
10 resolution procedures set forth in Section XX (Dispute  
11 Resolution) and EPA's action is overturned pursuant to that  
12 Section. The provisions of Section XX (Dispute Resolution) and  
13 Section XXI (Stipulated Penalties) shall govern the  
14 implementation of the O&M Activities and accrual and payment of  
15 any stipulated penalties during dispute resolution. If EPA's  
16 disapproval or modification is upheld, stipulated penalties shall  
17 accrue for such violation from the date on which the initial  
18 submission was originally required, as provided in this Section,  
19 Paragraph C.

20 F. The Second Stage O&M Work Plan and other items required  
21 to be submitted to EPA under this Consent Decree shall, upon  
22 approval or modification by EPA, be enforceable under this  
23 Consent Decree. In the event EPA approves or modifies a portion  
24 of the Second Stage O&M Work Plan or other item required to be  
25 submitted to EPA under this Consent Decree, the approved or  
26 modified portion shall be enforceable under this Consent Decree.

27 G. Items required to be submitted for approval by EPA  
28

pursuant to this Consent Decree are set forth in the Second Stage Statement of Work, Appendix 4 to this Consent Decree.

XIII. PROJECT COORDINATORS

A. Within thirty (30) days of the Effective Date of this Consent Decree, Settling Work Defendant, Lockheed Martin, the UAO Parties, the State and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other parties at least five (5) working days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. The Settling Work Defendant's Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the O&M Activities. The Settling Work Defendant's Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during O&M Activities.

B. Plaintiffs may designate other representatives, including, but not limited to, EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project

Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any O&M Activities required by this Consent Decree and to take any necessary response action when the Project Coordinator determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

C. EPA's Project Coordinator and the Defendants' Project Coordinators will meet on a regular basis as deemed appropriate by EPA's Project Coordinator.

#### XIV. FUNDING OF RESPONSE ACTIVITIES

A. Within sixty (60) days of the Effective Date, Lockheed Martin shall establish and maintain financial security in the amount of \$ 48 million, in one or a combination of the following forms:

1. A surety bond guaranteeing performance of the O&M Activities for the Upstream Facilities;
2. One or more irrevocable letters of credit;
3. A trust fund or combination of trust funds;
4. A guarantee to fund the O&M Activities for the Upstream Facilities by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with Lockheed Martin;

1           5. A demonstration that Lockheed Martin satisfies the  
2 requirements of 40 C.F.R. Part 264.143(f); or

3           6. A demonstration, by submittal of its annual report  
4 on Form 10-K filed with the Securities and Exchange Commission,  
5 that Lockheed Martin possesses the requisite financial ability to  
6 assure completion of the O&M Activities for the Upstream  
7 Facilities.

8           B. The amount of financial security that Lockheed Martin is  
9 required to maintain shall be decreased in the following  
10 increments:

11           1. Nine years after the Date of Commencement,  
12 Lockheed Martin shall maintain financial security in the amount  
13 of \$ 39 million.

14           2. Twelve years after the Date of Commencement,  
15 Lockheed Martin shall maintain financial security in the amount  
16 of \$ 31 million.

17           3. Fifteen years after the Date of Commencement,  
18 Lockheed Martin shall maintain financial security in the amount  
19 of \$ 18 million.

20           4. Upon decreasing the amount of financial security  
21 as provided by this Paragraph, Lockheed shall make a new  
22 demonstration of such financial security in the manner described  
23 in Paragraph A.1 through A.6 of this Section.

24           C. Within sixty (60) days of the Effective Date, each  
25 Settling Cash Defendant shall cause the funds in the escrow  
26 account established pursuant to the settlement agreement reached  
27 in the action entitled Lockheed Corporation v. Crane Company,  
28

1 United States District Court, Central District of California No.  
2 CV 94-2717 MRP (Tx) ("Escrow Account") to be transferred into a  
3 segregated account ("Second Consent Decree Account"), which shall  
4 be used to satisfy Lockheed Martin's obligations as required by  
5 this Consent Decree.

6 D. Within thirty (30) days prior to the Date of  
7 Commencement, Lockheed Martin shall establish a trust account  
8 ("O&M Trust Account"). The O&M Trust Account shall be used to  
9 satisfy Lockheed Martin's obligation to fund the O&M Activities  
10 for the Upstream Facilities and other obligations as required by  
11 this Section XIV (Funding of Response Activities), Section VI  
12 (Performance of the Work), Paragraph C.7, and Section XVIII  
13 (Indemnification and Insurance), of this Consent Decree.

14 Lockheed Martin also shall fund transition activities and the  
15 Settling Work Defendant's preparation of an integrated O&M manual  
16 for the combined Plant Facilities as agreed to in a separate  
17 agreement between Lockheed Martin and Settling Work Defendant.

18 1. The costs of O&M Activities with respect to the  
19 Upstream Facilities, including but not limited to the costs of  
20 rectifying any construction defect in the Upstream Facilities,  
21 all costs of additional response actions required by EPA pursuant  
22 to Section VII (Additional Response Actions) related to the  
23 Upstream Facilities, and costs incurred for the Site pursuant to  
24 Section VIII (EPA Periodic Review) shall be paid from the O&M  
25 Trust Account subject to the limitations and in accordance with  
26 the provisions set forth in this Section.

27 2. All costs of O&M Activities with respect to the  
28

Downstream Facilities, including but not limited to the costs of rectifying any construction defect in the Downstream Facilities, and all costs of additional response actions required by EPA pursuant to Section VII (Additional Response Actions) related to the Downstream Facilities shall be paid directly by the City and shall not be subject to reimbursement from the O&M Trust Account. The City's contracting and accounting systems shall be established so as to clearly distinguish between costs incurred for O&M Activities or other activities associated with the Upstream Facilities and costs incurred for O&M Activities or other activities associated with the Downstream Facilities.

3. Prior to the Date of Commencement and contemporaneously with the execution of appropriate documents under Section XIV, Paragraph L of this Consent Decree, the UAO Parties shall execute such agreements as are necessary to assign to the City of Burbank any and all express and implied warranties, rights, claims or causes of action they have or may have as against their construction contractors related to the construction of the Blending Facility, specifically including, but not limited to, claims for defects in the construction of the Blending Facility, but not including claims arising from delays in or excess costs of construction.

E. Lockheed Martin and the City shall, by January 1, 1999, jointly retain an independent cost estimating consultant ("Cost Consultant") acceptable to both parties and EPA, whose responsibilities shall include preparation of the annual budgets and audit reports for O&M Activities with respect to the Upstream

1 Facilities required by this Section. The Cost Consultant may be  
2 replaced by mutual agreement of Lockheed Martin and the City upon  
3 thirty (30) days written notice to EPA and the Cost Consultant,  
4 subject to approval by EPA. Either the City or Lockheed Martin  
5 may petition EPA for the replacement of the Cost Consultant.

6 1. If Lockheed Martin, the City and EPA are unable to  
7 agree upon a Cost Consultant by January 1, 1999, Lockheed Martin  
8 and the City shall, within thirty (30) days thereafter, each  
9 submit a list of three (3) cost estimating consultants to the  
10 other party and to EPA, along with information regarding the  
11 qualifications of each cost estimating consultant on its list.  
12 Within ten (10) days after both lists have been submitted, the  
13 City and Lockheed Martin may each veto one cost estimating  
14 consultant from the other's list. EPA shall select the Cost  
15 Consultant from the cost estimating consultants remaining on one  
16 or both of the lists, unless all such consultants are  
17 unacceptable to EPA.

18 2. The Cost Consultant may retain a subcontractor to  
19 perform some of his or her functions, as described herein. Any  
20 such subcontractor shall be approved by the City, Lockheed Martin  
21 and EPA prior to performing any work.

22 3. In the event of the resignation of the Cost  
23 Consultant, the City, Lockheed Martin and EPA shall attempt to  
24 agree upon the selection of a replacement. If the parties cannot  
25 agree upon a replacement, the procedures described in Paragraph  
26 E.1 above shall be employed to select a replacement. The lists  
27 of three (3) cost estimating consultants referred to in Paragraph  
28

1 E.1 shall be submitted forty-five (45) days prior to the  
2 effective date of resignation of the Cost Consultant or such  
3 other date as may be mutually agreed upon by the City, Lockheed  
4 Martin and EPA.

5 4. The Cost Consultant's fees shall be paid from the  
6 O&M Trust Account.

7 F. It shall be the Cost Consultant's responsibility to  
8 independently use his or her best technical judgment to prepare  
9 an annual budget for O&M Activities with respect to the Upstream  
10 Facilities for each of the years during which such O&M Activities  
11 are required by this Consent Decree ("Annual Budget"). The  
12 Annual Budget shall be developed in the following manner:

13 1. No later than one hundred and twenty (120) days  
14 prior to the Date of Commencement, Lockheed Martin shall provide  
15 the Cost Consultant and the City with non-proprietary information  
16 regarding its operation and maintenance costs with respect to the  
17 Upstream Facilities for the prior year.

18 2. Ninety (90) days prior to the Date of Commencement,  
19 and annually thereafter, the City may submit to the Cost  
20 Consultant, Lockheed Martin and EPA its estimate of the cost of  
21 O&M Activities with respect to the Upstream Facilities for the  
22 one-year period beginning on the Date of Commencement or on the  
23 anniversary thereof for the upcoming year. Such an estimate may  
24 be submitted by the City in advance of each of the eighteen (18)  
25 years for which O&M Activities are required by this Decree.

26 3. Sixty (60) days prior to the Date of Commencement,  
27 and annually thereafter, Lockheed Martin and EPA may submit  
28



1 comments to the Cost Consultant on the City's estimate submitted  
2 pursuant to Paragraph F.2 of this Section.

3 4. Thirty (30) days prior to the Date of Commencement,  
4 and annually thereafter, the Cost Consultant shall establish the  
5 Annual Budget based on: (1) O&M Activities expenditures with  
6 respect to the Upstream Facilities during prior years; (2) the  
7 City of Burbank's estimate; (3) Lockheed Martin's comments  
8 thereon, if any; (4) EPA's comments thereon, if any; and (5) any  
9 other cost estimating factors deemed relevant by the Cost  
10 Consultant.

11 5. The Annual Budget shall contain the following cost  
12 categories relating to the Upstream Facilities: direct labor,  
13 contracted-for labor, power, natural gas, liquid phase carbon,  
14 vapor phase carbon, laboratory costs, supplies and materials,  
15 disposal costs, permitting costs, replacement costs, insurance  
16 (including but not limited to insurance described solely in  
17 Exhibit 3 to this Consent Decree), fees of the Cost Consultant  
18 and any other cost categories related to the O&M Activities with  
19 respect to the Upstream Facilities that the Cost Consultant deems  
20 appropriate for cost accounting purposes. In addition, costs of  
21 compliance with the provisions of Sections VII (Additional  
22 Response Actions) with respect to the Upstream Facilities and  
23 VIII (EPA Periodic Review) of this Consent Decree shall be deemed  
24 to be O&M Activities and may be included in the Annual Budget.

25 6. The Cost Consultant shall include a 10% contingency  
26 for each cost category in the Annual Budget.

27 7. Lockheed Martin, the City and EPA shall each have  
28

the right to invoke dispute resolution pursuant to Section XX (Dispute Resolution) of this Consent Decree regarding the total budgeted amount set forth in any Annual Budget, the amount budgeted for any cost item, the inclusion or exclusion of any item from the Annual Budget, or any other matter related to the establishment of the Annual Budget.

G. Lockheed Martin shall ensure that the O&M Trust Account contains funds equal to or in excess of the Annual Budget established for the upcoming year as of the Date of Commencement, and as of each anniversary of that date, by causing funds from the Second Consent Decree Account or its own funds to be transferred to the O&M Trust Account. The City shall have no obligation to undertake O&M Activities with respect to the Upstream Facilities if the O&M Trust Account has not been funded in the manner required by this Paragraph.

H. The City shall submit monthly statements to the trustee of the O&M Trust Account ("Trustee") for payment. Each statement shall be broken down into the same cost categories as set forth in the Annual Budget. The statement shall include copies of all relevant documentation, including purchasing documents, backup documentation for all internal costs, and all invoices, including backup documentation to support all invoiced contracted-for costs, and a declaration by an authorized representative of the City that each amount requested in the statement is due and payable to a party who provided materials or services for O&M Activities with respect to the Upstream Facilities conducted in accordance with the Second Consent Decree and the Second Stage

1 O&M Work Plan. The City shall simultaneously provide a copy of  
2 each monthly statement to the Cost Consultant, Lockheed Martin  
3 and EPA.

4 1. Any monthly statement seeking payment for an  
5 expenditure outside a cost category in the Annual Budget and any  
6 statement which will cause the applicable Annual Budget cost  
7 category amount to be exceeded must be accompanied by an  
8 explanation of the necessity for that expenditure.

9 2. Disbursements by the Trustee.

10 a. The Trustee shall promptly pay all amounts  
11 requested in a monthly statement that satisfies the requirements  
12 of this Section. Lockheed Martin and EPA shall have the right to  
13 invoke dispute resolution pursuant to Section XX (Dispute  
14 Resolution) of this Consent Decree with regard to the necessity  
15 for any expenditure for which an explanation is required, within  
16 thirty (30) days of receipt of the monthly statement. If either  
17 Lockheed Martin or EPA invokes dispute resolution as to any  
18 amount included in a monthly statement, EPA shall make a  
19 preliminary determination, within ten (10) working days of  
20 dispute resolution being invoked, concerning whether the disputed  
21 amount should be paid. Such amount shall be promptly reimbursed  
22 to Lockheed Martin if Lockheed Martin thereafter prevails in  
23 dispute resolution.

24 b. In the event that EPA decides to take over  
25 some or all of the work related to the Upstream Facilities  
26 required to be performed by the Settling Work Defendant pursuant  
27 to Section XXII (Covenants Not to Sue by Plaintiffs), Paragraph  
28

F, or Section XVIII (Indemnification and Insurance), Paragraph B, the Trustee shall reimburse EPA within thirty (30) days of EPA's written demand for EPA's costs not inconsistent with the National Contingency Plan which are incurred to take over and/or to perform such work. In the alternative, EPA may elect to be reimbursed for some or all of such costs as Future Site-Specific Response Costs pursuant to Section XVII (Reimbursement of Response Costs).

c. Notwithstanding whether EPA elects to be reimbursed for such costs pursuant to this Section or pursuant to Section XVII (Reimbursement of Response Costs), EPA shall not be subject to the requirements of this Section, including but not limited to Annual Budget and audit requirements, concerning such costs.

d. As is set forth in Section XXII (Covenants Not to Sue by Plaintiffs), Paragraph F of this Consent Decree, and subject to the limitations described in that Section and Paragraph, Lockheed Martin shall have the right to be reimbursed by Settling Work Defendant for that portion of such costs which is caused by the necessity for EPA to take over such work. As is set forth in Section XVIII (Indemnification and Insurance), Paragraph B, and subject to the limitations described in that Section and Paragraph, the City of Burbank shall not be required to reimburse Lockheed Martin for any portion of such costs if EPA takes over the work pursuant to that Section and Paragraph.

3. The Cost Consultant shall audit the City's requests for payments for expenditures on O&M Activities with

1 respect to the Upstream Facilities on an annual basis. The audit  
2 shall cover the one-year period ending one hundred eighty (180)  
3 days prior to the beginning of the period covered by the next  
4 Annual Budget and the Cost Consultant's audit report ("Audit  
5 Report") shall be provided to the City, Lockheed Martin and EPA  
6 at least one hundred fifty (150) days prior to the beginning of  
7 the period covered by the next Annual Budget. The purpose of the  
8 audit is to: (1) assist the Cost Consultant in preparing the  
9 Annual Budget; and (2) allow the parties to determine whether any  
10 unnecessary costs have been incurred.

11 4. Within sixty (60) days of receipt of an annual  
12 Audit Report, the City shall reimburse the O&M Trust Account for  
13 expenditures found to be unnecessary during the audited period.

14 5. Lockheed Martin, the City and EPA shall each have  
15 the right to invoke dispute resolution with respect to any  
16 finding in an Audit Report.

17 6. The Cost Consultant shall perform a final audit of  
18 the City's request for payments for O&M Activities with respect  
19 to the Upstream Facilities within ninety (90) days following  
20 EPA's approval of the Certificate of Completion pursuant to  
21 Section XV of this Decree. Lockheed and the City shall settle  
22 all accounts with the O&M Trust Account within thirty (30) days  
23 of the issuance of the Cost Consultant's final Audit Report. At  
24 that time, the Cost Consultant shall direct the Trustee and the  
25 Trustee shall be required to pay over all remaining funds in the  
26 O&M Trust Account, if any, to Lockheed Martin. Lockheed Martin,  
27 the City and EPA shall have the right to invoke dispute  
28

1 resolution with regard to the final accounting or the final Audit  
2 Report.

3 I. The City of Burbank shall utilize a competitive bidding  
4 process to secure all services and materials required to perform  
5 O&M Activities with respect to the Upstream Facilities that are  
6 susceptible to contract. Award of any contract to other than the  
7 "lowest responsible bidder" within the meaning of Burbank  
8 Municipal Code § 9-122 (Section 54 of the Charter of the City of  
9 Burbank, as amended January 14, 1971), shall require a  
10 justification by the City pursuant to applicable state and local  
11 law. Lockheed Martin hereby reserves all of its rights under  
12 state or local law concerning award of any such contract to any  
13 person or persons except the "lowest responsible bidder" within  
14 the meaning of Burbank Municipal Code § 9-122.

15 J. For operation of the Upstream Facilities, the City of  
16 Burbank shall utilize the lowest cost power source available  
17 under any of the following options: (1) under ordinances or  
18 resolutions of general application adopted by the City, (2)  
19 mandated by federal law, or (3) in accordance with Public  
20 Utilities Code section 9602 or other applicable state law.  
21 Should a separate power generation facility, or any other capital  
22 improvement not integral to the Upstream Facilities, be proposed  
23 by Lockheed Martin as a capital expenditure under Paragraph K  
24 below, the city will consider such a proposal on the same fair  
25 and equitable basis as it would treat any similar proposal by any  
26 other industrial power consumer in the City. Power for operating  
27 the Upstream Facilities, when provided by the City, shall be  
28

1 billed by the City of Burbank at the lowest rate then charged by  
2 the City for comparable service conditions. As of September 1,  
3 1996, "comparable service conditions" for the Upstream Facilities  
4 are Rate Class "Industrial" and Rate Code "P." If the City  
5 adopts a rate for "comparable service conditions" other than the  
6 rate charged by the City to any public or private school, or  
7 charged to any user under an agreement entered into in  
8 conjunction with a "redevelopment project" pursuant to the  
9 California Redevelopment Act, Health & Safety Code § 33000 et  
10 seq., which provides power at lower cost than Rate Code "P," the  
11 lower rate shall apply to power sold to the Upstream Facilities.

12 K. Lockheed Martin may at any time propose that a capital  
13 expenditure be incurred to reduce O&M expenditures with respect  
14 to the Upstream Facilities. Any such proposal shall be  
15 simultaneously submitted to the Cost Consultant, the City and  
16 EPA. Any such proposal shall be limited to facilities that can  
17 be fully accommodated within "Area F" (except necessary  
18 utilities) as shown on Appendix F to the First Consent Decree.

19 1. Settling Work Defendant shall have no obligation  
20 to operate any separate power generation facility. Nor shall  
21 Settling Work Defendant have any obligation to operate any  
22 capital improvement constructed pursuant to this Paragraph K,  
23 where such capital improvement is not integral to the Upstream  
24 Facilities. It shall be the obligation of Lockheed Martin to  
25 operate any such capital improvement.

26 2. A capital improvement shall be considered to be  
27 "integral to the Upstream Facilities" if such capital improvement  
28

1 either (a) would effectively replace a facility or portion of a  
2 facility constructed by Lockheed Martin pursuant to the First  
3 Consent Decree, or (b) would be intrinsically linked to a  
4 facility or portion of a facility constructed by Lockheed Martin  
5 pursuant to the First Consent Decree.

6 3. The Cost Consultant shall review the proposal and  
7 any comments submitted by the City and/or the O&M Contractor,  
8 and/or EPA, and determine, based on generally accepted cost  
9 engineering principles, whether the capital expenditure is  
10 economically justified based on the size of the expenditure, the  
11 projected O&M savings and the remaining life of the project. The  
12 Cost Consultant may meet with Lockheed Martin, the City and/or  
13 the O&M Contractor; and/or EPA, with respect to the proposal and  
14 comments thereon.

15 4. If the Cost Consultant determines that the capital  
16 expenditure is economically justified, Lockheed Martin may submit  
17 the proposal and a conceptual design of the proposed work to EPA  
18 for approval. The City and/or the O&M Contractor may submit  
19 comments to EPA regarding the proposal and the conceptual design.

20 5. EPA shall review the proposal and the conceptual  
21 design, and any comments submitted by the City and/or the O&M  
22 Contractor, and determine based on relevant regulations and  
23 policies (which may include but shall not be limited to the  
24 remedy selection criteria set forth in the National Contingency  
25 Plan), whether the proposed capital expenditure may be  
26 incorporated into the remedy. EPA shall document its decision in  
27 accordance with applicable laws and regulations. EPA may meet  
28



1 with Lockheed Martin and/or the City and/or the O&M Contractor  
2 with respect to the proposal and conceptual design and any  
3 comments thereon. Nothing contained in this Paragraph shall be  
4 deemed or construed to limit or abrogate in any way the City's  
5 exercise of its police powers or EPA's authority under CERCLA.

6 6. If EPA approves the conceptual design, Lockheed  
7 Martin shall submit a final design for the proposed work. If EPA  
8 approves the final design, Lockheed Martin shall proceed to  
9 implement the capital improvement. Lockheed Martin shall be  
10 solely responsible for funding and constructing the capital  
11 improvement.

12 7. Lockheed Martin shall take reasonable measures to  
13 minimize any noise and other disruptions that may be associated  
14 with the construction of any capital improvements.

15 8. Lockheed Martin shall defend, indemnify and hold  
16 harmless the City of Burbank with respect to actions against the  
17 City based upon disturbances related to the installation of  
18 capital improvements.

19 L. With the exception of the four extraction wells (VO-1,  
20 2, 3 and 4) located at the former Lockheed Martin Plant B-1 in  
21 Burbank, California, as depicted in Appendix 8 to this Consent  
22 Decree, both the Upstream Facilities and the Downstream  
23 Facilities shall be acknowledged by the City as its property for  
24 all purposes; provided, however, that any capital improvement  
25 constructed pursuant to Paragraph K of this Section that is not  
26 integral to the Upstream Facilities, including but not limited to  
27 any separate power generation facility, shall not be considered  
28

1 or deemed to be the property of the City. Any such capital  
2 improvement shall be the property of Lockheed Martin, unless the  
3 City or a third party agrees to own the improvement. On or  
4 before the Date of Commencement, the UAO Parties, Lockheed Martin  
5 and the City shall execute appropriate writings documenting the  
6 City's ownership interest in such property. As to the extraction  
7 wells located on Lockheed Martin property, there shall be a  
8 recorded right of access.

9 M. Commencing from the Date of Commencement, and for a  
10 period not to exceed the applicable state statutes of limitations  
11 or statutes of repose under which Lockheed Martin may bring such  
12 an action against its design contractors less sixty (60) days,  
13 the Settling Work Defendant may assert as against Lockheed Martin  
14 that any of the Upstream Facilities' failure (if any) to perform  
15 as originally designed is due to a Design Defect. Commencing  
16 upon the Effective Date of this Consent Decree (as defined in  
17 Section XXVIII), and for a period not to exceed the applicable  
18 state statutes of limitations or statutes of repose under which  
19 the UAO Parties may bring such an action against their design  
20 contractors less sixty (60) days, the Settling Work Defendant may  
21 assert as against the UAO Parties that the Blending Facility's  
22 failure (if any) to perform as originally designed is due to a  
23 Design Defect. The Parties agree that the date of substantial  
24 completion of the Upstream Facilities was March 1, 1994 and the  
25 date of the substantial completion of the Blending Facility was  
26 January 6, 1996.

27 1. The Settling Work Defendant, Lockheed, the UAO  
28

Parties and EPA agree to the following procedures for the resolution of disputes arising from claims that the Upstream Facilities or the Blending Facility have failed to perform as originally designed due to a Design Defect. These disputes may include but are not limited to a determination as to whether or not a failure to perform as originally designed occurred, whether the failure (if any) was due to a Design Defect, the nature, extent and scope of the repair or other work required to cause the facility in question to meet designated operating standards, the reasonableness and necessity of the costs incurred or to be incurred for such work, and the reasonableness, necessity and timeliness of steps taken to address or mitigate such damage claims.

a. Upon the occurrence of a facility's failure to perform as originally designed which the Settling Work Defendant alleges to be due, in whole or in part, to a Design Defect in the Upstream Facilities or the Blending Facility:

(1) If the alleged occurrence or failure causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the Settling Work Defendant shall take all actions and provide notifications required by Section XVI (Emergency Response). If the alleged occurrence or failure does not come within the provisions of Section XVI (Emergency Response), Settling Work Defendant shall immediately advise the EPA of the alleged occurrence or failure, by telephone or facsimile transmission.

(2) Settling Work Defendant shall provide a written Notice of Design Defect to EPA within ten (10) days of the date when Settling Work Defendant knew, or reasonably should have known that the alleged occurrence or failure was caused by an alleged Design Defect. The written Notice of Design Defect shall include the basis for the allegation. The Settling Work Defendant shall concurrently provide a copy of the written Notice of Design Defect to either: 1) Lockheed Martin if the alleged Design Defect relates to the Upstream Facilities, or 2) the UAO Parties if the alleged Design Defect relates to the Blending Facility.

b. The Settling Work Defendant shall take such steps as EPA directs to commence repairs to the facility, and shall take reasonable steps to mitigate all damages and costs incurred as a result of the alleged Design Defect. Within five (5) days of undertaking such steps, the Settling Work Defendant shall advise EPA and all interested Parties, in writing and by facsimile transmission, of the repairs and steps it has taken or intends to undertake.

c. The Parties shall cooperate with one another and immediately make available to each other: all facilities pertaining to the failure and the alleged Design Defect; all records pertaining to the failure and the alleged Design Defect; all records pertaining to the operations and maintenance of the facility including all repair records, all work plans or designs for repair or mitigation of damages; all persons with information about the failure and the alleged Design Defect; and all systems

1 that are claimed to be defective. The information to be made  
2 available by the UAO Parties and Lockheed Martin shall include  
3 but shall not be limited to applicable contracts and  
4 correspondence with Lockheed Martin's or the UAO Parties' design  
5 contractors, internal documentation relating to the design of the  
6 facility with the alleged Design Defect, and "as-builts" of the  
7 facility with the alleged Design Defect. The Parties shall make  
8 good faith efforts to preserve evidence and information. The  
9 Settling Work Defendant's good faith efforts may include but  
10 shall not be limited to maintaining a videotape record or log of  
11 the status or condition of the facility prior to the performance  
12 of repairs or alterations, where practicable.

13           2. Not less than fifteen (15) nor more than thirty  
14 (30) days after receipt of the Settling Work Defendant's written  
15 Notice of Design Defect, the EPA shall make a Preliminary  
16 Finding.

17           a. Lockheed Martin or the UAO Parties may submit  
18 a written or oral response to the Settling Work Defendant's  
19 allegation within the fifteen (15) days.

20           b. The EPA's Preliminary Finding shall include a  
21 preliminary determination as to whether the affected facility or  
22 facilities failed to perform as originally designed; whether that  
23 failure was, in whole or in part, due to a Design Defect; a  
24 preliminary allocation of financial responsibility among the  
25 Settling Work Defendant, Lockheed Martin and the UAO Parties; and  
26 a preliminary finding as to the reasonableness and necessity of  
27 any repairs or other work done or proposed by the Settling Work  
28

1 Defendant as a result of the alleged Design Defect.

2 c. According to the preliminary allocation of  
3 financial responsibility in the EPA Preliminary Finding, the  
4 Settling Work Defendant, Lockheed Martin, and/or the UAO Parties  
5 shall finance the work deemed necessary by EPA to cause the  
6 affected facility to perform as originally designed, as follows.

7 (1) If EPA determines that the failure was  
8 caused, in whole or in part, by a Design Defect in any of the  
9 Upstream Facilities, Lockheed Martin shall, within twenty-five  
10 (25) days of receipt of the EPA Preliminary Finding, or within  
11 twenty-five (25) days of receipt of an itemized statement by the  
12 Settling Work Defendant of all repairs or other work performed or  
13 to be undertaken as a result of the alleged Design Defect,  
14 whichever is later, remit to the Settling Work Defendant the cost  
15 of all such work which Lockheed is required to finance pursuant  
16 to the preliminary allocation of financial responsibility.

17 (2) If EPA determines that the failure was  
18 caused, in whole or in part, by a Design Defect in the Blending  
19 Facility, the UAO Parties shall, within twenty-five (25) days of  
20 receipt of the EPA Preliminary Finding, or within twenty-five  
21 (25) days of receipt of an itemized statement by the Settling  
22 Work Defendant of all repairs or other work performed or to be  
23 undertaken as a result of the alleged Design Defect, whichever is  
24 later, remit to the Settling Work Defendant the cost of all such  
25 work which the UAO Parties are required to finance pursuant to  
26 the preliminary allocation of financial responsibility. Among  
27 the UAO Parties, the obligations of this Paragraph shall be joint  
28

1 and several.

2 (3) If EPA determines that the failure of  
3 the affected facility was not caused, in whole or in part, by a  
4 Design Defect in the Upstream Facilities or the Blending  
5 Facility, the Settling Work Defendant and Lockheed Martin shall  
6 finance such work as these parties are required to finance  
7 pursuant to this Section, Paragraphs A-L.

8 (4) The Settling Work Defendant shall use  
9 such funds as are remitted by Lockheed Martin or the UAO Parties  
10 pursuant to the Preliminary Finding to pay for work necessary to  
11 cause the facility with the alleged Design Defect to perform as  
12 originally designed and for no other purpose.

13 (5) The Preliminary Finding may require a  
14 party whose facility has been determined to have a Design Defect  
15 to provide for advance or ongoing funding of any work necessary  
16 to cause the affected facility to perform as originally designed.

17 (6) The Preliminary Finding also may require  
18 the Settling Work Defendant to account for expenditures of funds  
19 remitted to it under this Paragraph, and to reimburse any party  
20 who has remitted such funds if the amount remitted exceeds the  
21 expenditures necessary to perform the work necessary to cause the  
22 affected facility to perform as originally designed.

23 (7) EPA shall have continuing jurisdiction  
24 over the implementation of the Preliminary Finding.

25 d. Subject to EPA's approval, the Settling Work  
26 Defendant shall perform such work as is necessary to cause the  
27 affected facility to perform as originally designed. EPA may  
28

1 require the Settling Work Defendant to submit a schedule and work  
2 plan for such work within a specified period of time. Such  
3 schedule(s) and work plan(s) shall be submitted, approved and  
4 implemented in accordance with Section XII (Submissions Requiring  
5 Agency Approval).

6 3. Not less than ninety (90) nor more than one hundred  
7 twenty (120) days after receipt of the Settling Work Defendant's  
8 Notice of Design Defect, the EPA shall make a further evaluation  
9 and issue a Further Determination based upon the following  
10 procedure:

11 a. The Settling Work Defendant, Lockheed Martin  
12 and/or the UAO Parties, upon receipt of a copy of a Notice of  
13 Design Defect pursuant to Paragraph M.1.a.2 of this Section shall  
14 have sixty (60) days from receipt of the statement to further  
15 inspect the facilities and submit a written statement to EPA.  
16 Any such Settling Defendant may request the opportunity to make  
17 an oral presentation to the EPA by sending written notice of such  
18 intent to EPA and other Settling Defendants who receive a copy of  
19 the Notice of Design Defect. EPA shall set a reasonable date,  
20 time and location for the presentation. The EPA, in its  
21 discretion, may require oral presentations from the affected  
22 Settling Defendants.

23 b. If any party submits a written statement as  
24 described in Paragraph M.3.a of this Section, EPA shall issue a  
25 Further Determination. In the Further Determination, if any, EPA  
26 shall determine whether or not a failure to perform as originally  
27 designed occurred; whether the failure (if any) was due, in whole  
28



or in part, to a Design Defect; the nature, extent and scope of any repairs or other work required to cause the facility to perform as originally designed; the reasonableness and necessity of the costs incurred or to be incurred for such work; the reasonableness, necessity and timeliness of steps taken to address or mitigate damage claims; the comparative fault of Settling Work Defendant, Lockheed Martin and/or the UAO Parties; and an allocation of financial responsibility among Settling Work Defendant, Lockheed Martin and/or the UAO Parties. EPA shall provide written notice of its decision to the parties.

c. According to the allocation of financial responsibility in the EPA Further Determination:

(1) If EPA determines that the failure was caused, in whole or in part, by a Design Defect in any of the Upstream Facilities, Lockheed Martin shall, within twenty-five (25) days of receipt of the EPA Further Determination, or within twenty-five (25) days of receipt of an itemized statement by the Settling Work Defendant of all repairs or other work performed or to be undertaken as a result of the alleged Design Defect, whichever is later, 1) remit to the Settling Work Defendant the cost of all such work which Lockheed Martin is required to finance by the Further Determination, less any portion of such amounts previously remitted to the Settling Work Defendant pursuant to the Preliminary Finding, and 2) reimburse other Settling Defendant(s) if required by the Further Determination.

(2) If EPA determines that the failure was caused, in whole or in part, by a Design Defect in the Blending

1 Facility, the UAO Parties shall, within twenty-five (25) days of  
2 receipt of the EPA Further Determination, or within twenty-five  
3 (25) days of receipt of an itemized statement by the Settling  
4 Work Defendant of all repairs or other work performed or to be  
5 undertaken as a result of the alleged Design Defect, whichever is  
6 later, 1) remit to the Settling Work Defendant the cost of all  
7 such work which the UAO Parties are required to finance pursuant  
8 to the Further Determination, less any portion of such amounts  
9 previously remitted to the Settling Work Defendant pursuant to  
10 the Preliminary Finding, and 2) reimburse other Settling  
11 Defendant(s) if required by the Further Determination. Among the  
12 UAO Parties, the obligations of this Paragraph shall be joint and  
13 several.

14 (3) If EPA determines that the failure of  
15 the affected facility was not caused, in whole or in part, by a  
16 Design Defect, the Settling Work Defendant and Lockheed Martin  
17 shall finance such work as these parties are required to finance  
18 pursuant to this Section, Paragraphs A-L. If required by the  
19 Further Determination, Settling Work Defendant shall reimburse  
20 Lockheed Martin or the UAO Parties for amounts advanced pursuant  
21 to the Preliminary Finding.

22 (4) The Settling Work Defendant shall use  
23 such funds as are remitted by Lockheed Martin or the UAO Parties  
24 pursuant to the Further Determination to pay for work necessary  
25 to cause the facility with the alleged Design Defect to perform  
26 as originally designed and for no other purpose.

27 (5) The Further Determination may require a  
28

1 party whose facility has been determined to have a Design Defect  
2 to provide for advance or ongoing funding of any work necessary  
3 to cause the affected facility to perform as originally designed.

4 (6) The Further Determination shall require  
5 the Settling Work Defendant to account for expenditures of funds  
6 remitted to it under this Paragraph M, and to reimburse any  
7 party who has remitted such funds if the amount remitted exceeds  
8 the expenditures necessary to perform the work necessary to cause  
9 the affected facility to perform as originally designed. The  
10 Further Determination also shall require that the Settling Work  
11 Defendant make any such reimbursement within a reasonable,  
12 specified period of time.

13 (7) EPA shall have continuing jurisdiction  
14 over the Further Determination.

15 4. If a dispute exists among Settling Work Defendant,  
16 Lockheed Martin and/or the UAO Parties as to the EPA Further  
17 Determination, the Parties' participation in or satisfaction of  
18 the terms or conditions set forth in the EPA Preliminary Finding  
19 or Further Determination shall not act as a waiver of any claims  
20 or defenses by any party, and the Settling Work Defendant,  
21 Lockheed Martin and/or the UAO Parties may proceed to seek  
22 judicial review of such a dispute as follows:

23 a. The Settling Work Defendant, Lockheed Martin  
24 or the UAO Parties may seek a final resolution of the dispute  
25 between or among them concerning the EPA Further Determination by  
26 filing suit against one another in a court of competent  
27 jurisdiction. Nothing in this Section shall be construed to  
28

1 provide any party with a claim or cause of action against the  
2 United States or the State.

3           b. The court shall determine all issues regarding  
4 the dispute among the Settling Work Defendant, Lockheed Martin,  
5 and/or the UAO Parties concerning the EPA Further Determination  
6 de novo. Discovery and evidence as to such dispute(s) shall not  
7 be limited to the Administrative Record, except that nothing in  
8 this Paragraph shall be construed to affect the restrictions on  
9 judicial review set forth in CERCLA section 113 (j) and (k), 42  
10 U.S.C. § 9613(j)-(k) or California Health & Safety Code section  
11 25356.1(g), Cal. Health & Safety Code § 25356.1(g).

12           c. Upon the entry of a final judgment by the  
13 court or upon final resolution of the dispute as agreed upon by  
14 the parties, if the court's determination and allocation or the  
15 parties' final resolution differs from that set forth in the  
16 EPA's Further Determination, then each party shall be reimbursed  
17 or the responsible party shall pay another party's previous  
18 allocation so that each party's final share of total costs shall  
19 correspond to the court's judgment or the parties' final  
20 resolution. Any such reimbursement may include pre-judgment  
21 interest pursuant to California Civil Code section 3287, Cal.  
22 Civ. Code § 3287, unless otherwise agreed by the parties. The  
23 court's final judgment or the parties' final resolution shall  
24 supersede EPA's Further Determination. Should additional costs  
25 be incurred relating to the Design Defect(s) at issue after the  
26 court's final judgment or the parties' final resolution, the  
27 court's final judgment or the parties' final resolution shall be  
28

1 followed by the parties and EPA.

2 N. Funding of Repairs Required by Earthquakes or Other  
3 Force Majeure Events

4 1. Definition of "Major Damage" As used in this  
5 Paragraph, "Major Damage" shall mean physical damage which EPA  
6 has determined was caused by a force majeure event pursuant to  
7 Section XIX (Force Majeure) of this Consent Decree and will cost  
8 more than the following amounts to repair or rebuild with respect  
9 to the affected Plant Facilities:

10 a. more than one million dollars (\$ 1,000,000)  
11 with respect to the Upstream Facilities; or

12 b. more than one hundred and fifty thousand  
13 dollars (\$ 150,000) with respect to the Blending Facility.

14 2. Definition of "Uninsurable Force Majeure Event"

15 "Uninsurable Force Majeure Event" shall mean a force majeure  
16 event as defined in Section XIX (Force Majeure) of this Consent  
17 Decree, other than an earthquake or damage resulting from an  
18 earthquake, that causes physical damage to any of the Plant  
19 Facilities which is not covered by any insurance maintained by  
20 the Settling Work Defendant, the O&M Contractor or its  
21 subcontractors, including but not limited to insurance maintained  
22 pursuant to this Consent Decree or Exhibit 3 hereto, and which  
23 EPA has determined such persons could not have insured at a  
24 commercially reasonable cost.

25 3. Earthquake

26 In the event of an earthquake which causes damage to any of  
27 the Plant Facilities, including but not limited to Major Damage  
28

1 to the Upstream Facilities and/or the Blending Facility, and EPA  
2 determines that the damage should be repaired:

3 a. Lockheed Martin shall fund the repair and/or  
4 rebuilding of the affected Upstream Facilities up to the first  
5 one million dollars (\$ 1,000,000) of necessary expenditure,  
6 and/or the repair and/or rebuilding of the Blending Facility up  
7 to the first one hundred and fifty thousand dollars (\$ 150,000)  
8 of necessary expenditure; and

9 b. The City of Burbank shall fund the repair  
10 and/or rebuilding of the other affected Downstream Facilities.

11 4. Uninsurable Force Majeure Event

12 In the event of an Uninsurable Force Majeure Event that  
13 causes damage, including but not limited to Major Damage to the  
14 Upstream Facilities and/or the Blending Facility, and EPA  
15 determines that the damage should be repaired:

16 a. Lockheed Martin shall fund the repair and/or  
17 rebuilding of the affected Upstream Facilities;

18 b. The Settling Cash Defendants shall fund the  
19 repair and/or rebuilding of the Blending Facility up to the first  
20 one hundred and fifty thousand dollars (\$ 150,000) of necessary  
21 expenditure. The obligations of this Paragraph shall be joint  
22 and several among the Settling Cash Defendants; and

23 c. The City of Burbank shall fund the repair  
24 and/or rebuilding of the other affected Downstream Facilities.

25 5. Force Majeure Events Other Than Earthquake or  
26 Uninsurable Force Majeure Events

27 In the event of a force majeure event (as is defined in  
28 Section XIX (Force Majeure)), other than an earthquake or

Uninsurable Force Majeure Event, which causes damage, including but not limited to Major Damage to the Upstream Facilities and/or the Blending Facility, Lockheed Martin and/or the City of Burbank shall fund the repair and/or rebuilding of the affected Plant Facilities pursuant to their respective funding obligations as described in this Section (Funding of Response Activities), and otherwise in accordance with this Consent Decree, including but not limited to Sections VI (Performance of the Work), VII (Additional Work), and XIX (Force Majeure).

6. In the event of Major Damage to the Upstream Facilities and/or the Blending Facility as the result of an earthquake or to the Blending Facility as the result of an Uninsurable Force Majeure Event, and except as to those Settling Defendants described in Appendix 3 to this Consent Decree, EPA reserves all of its rights against Settling Defendants pursuant to Section XXII (Covenants Not to Sue by Plaintiffs), including but not limited to the right to issue an administrative order to require the complete repair and/or rebuilding of the affected Plant Facilities.

7. If EPA exercises its rights pursuant to Paragraph N.6 of this Section, the Settling Defendants agree between and among themselves that:

a. In the event of an earthquake, Lockheed Martin and the Settling Cash Defendants shall not seek funding, contribution or reimbursement from the City of Burbank for funding any repairs and/or rebuilding that EPA determines should be made to the Upstream Facilities and/or the Blending Facility;

1 and the City shall not seek funding, contribution or  
2 reimbursement from Lockheed Martin or the Settling Cash  
3 Defendants for funding any repairs and/or rebuilding that EPA  
4 determines should be made to the Downstream Facilities; and

5           b. In the event of an Uninsurable Force Majeure  
6 Event, the Settling Cash Defendants shall not seek funding,  
7 contribution or reimbursement from the City of Burbank or  
8 Lockheed Martin for funding any repairs and/or rebuilding that  
9 EPA determines should be made to the Blending Facility; the City  
10 shall not seek funding, contribution or reimbursement from  
11 Lockheed Martin or the Settling Cash Defendants for any repairs  
12 and/or rebuilding that EPA determines should be made to the  
13 Downstream Facilities; and Lockheed Martin shall not seek  
14 funding, contribution or reimbursement from the Settling Work  
15 Defendant or the Settling Cash Defendants for any repair and/or  
16 rebuilding that EPA determines should be made to the Upstream  
17 Facilities.

18           8. Lockheed Martin's, the City of Burbank's, and/or  
19 the Settling Cash Defendants' obligations to make repairs or to  
20 rebuild pursuant to this Paragraph shall cease if EPA notifies  
21 the affected party that EPA does not intend to require the repair  
22 and/or rebuilding of the affected Plant Facilities.

23           9. Any repairs that EPA determines should be made to  
24 the Plant Facilities pursuant to this Paragraph shall be  
25 performed by the City of Burbank and funded as provided in this  
26 Paragraph.

27           10. Any disputes between EPA and any of the Parties,  
28



1 or between or among any of the Settling Defendants concerning the  
2 cause, cost or necessity for any repairs and/or rebuilding of the  
3 affected Plant Facilities pursuant to this Paragraph shall be  
4 subject to dispute resolution pursuant to Section XX of this  
5 Consent Decree (Dispute Resolution). Notwithstanding the  
6 foregoing:

7           a. If the City of Burbank claims that an  
8 earthquake or Uninsurable Force Majeure Event necessitates the  
9 repair and/or rebuilding of the Plant Facilities, and EPA  
10 determines that the repair and/or rebuilding should be made, EPA  
11 shall make an initial determination whether such work is required  
12 as the result of an earthquake or Uninsurable Force Majeure  
13 Event. As appropriate, EPA may also make an initial  
14 determination as to the means and manner of funding to be  
15 provided by the designated Party or Parties responsible for  
16 funding such work pursuant to this Paragraph.

17           b. The Parties shall fund and/or perform such  
18 repairs as EPA determines are necessary according to EPA's  
19 initial determination, and otherwise in accordance with their  
20 respective obligations under this Section (Funding Of Response  
21 Activities). If a Party prevails in dispute resolution on the  
22 contention that it should not have been required to fund repairs  
23 pursuant to this Paragraph, such Party shall be promptly  
24 reimbursed by the appropriate Party or Parties determined to be  
25 responsible for funding such repairs in accordance with the final  
26 decision in the Dispute Resolution.

1 XV. CERTIFICATION OF COMPLETION

2 Defendants' obligations for performance of the work pursuant  
3 to Section VI of this Consent Decree and Funding of Response  
4 Activities pursuant to Section XIV of this Consent Decree shall  
5 be deemed satisfied upon issuance of the Certification of  
6 Completion. It is anticipated by the Parties that the  
7 certification process set forth below will occur eighteen (18)  
8 years after the Date of Commencement.

9 A. Completion of the O&M Activities.

10 1. At least ninety (90) days prior to the date that  
11 Settling Work Defendant anticipates that the work will have been  
12 fully performed, Settling Work Defendant shall submit a written  
13 report requesting certification to EPA for approval, with a copy  
14 to the State, pursuant to Section XII (Submissions Requiring  
15 Agency Approval). During the 90-day period, EPA shall determine  
16 whether dismantling and/or decommissioning of any facilities  
17 constructed pursuant to the First Consent Decree or UAO 92-12 is  
18 required pursuant to Section VI (Work to be Performed), Paragraph  
19 C.6 of this Consent Decree.

20 2. In the Settling Work Defendant's report seeking  
21 Certification of Completion, a registered professional engineer  
22 and the Settling Work Defendant's Project Coordinator shall state  
23 that the O&M Activities, except for dismantling and/or  
24 decommissioning activities, will be complete in full satisfaction  
25 of the requirements of this Consent Decree. The written report  
26 shall include all appropriate and necessary information to a  
27 determination of completion, including the date upon which  
28

1 completion is anticipated, and if appropriate, drawings signed  
2 and stamped by a professional engineer. The report shall contain  
3 the following statement, signed by the Settling Work Defendant's  
4 authorized Project Coordinator:

5 "To the best of my knowledge, after thorough  
6 investigation, I certify that the information contained  
7 in or accompanying this submission is true, accurate  
8 and complete. I am aware that there are significant  
penalties for submitting false information, including  
the possibility of fine and imprisonment for knowing  
violations."

9 3. If EPA deems necessary, EPA may conduct a pre-  
10 certification inspection concerning completion of the O&M  
11 Activities. If, after review of the written report and  
12 conducting a pre-certification inspection, if EPA deems such an  
13 inspection necessary, and after reasonable opportunity to review  
14 and comment by the State, EPA determines that the O&M Activities  
15 or any portion thereof except dismantling and/or decommissioning  
16 activities will not be completed in accordance with this Consent  
17 Decree on the date anticipated by Settling Work Defendant, EPA  
18 will notify the Settling Work Defendant in writing of the  
19 activities that must be undertaken to complete the O&M Activities  
20 except dismantling and/or decommissioning activities.

21 4. EPA will set forth in the notice to the Settling  
22 Work Defendant a schedule for performance of such activities  
23 consistent with this Consent Decree and the Second Stage O&M Work  
24 Plan or require the Settling Work Defendant to submit a schedule  
25 to EPA for approval pursuant to Section XII (Submissions  
26 Requiring Agency Approval). Settling Work Defendant shall  
27 perform all activities described in the notice in accordance with  
28

1 the specifications and schedules established pursuant to this  
2 Paragraph, subject to its right to invoke the dispute resolution  
3 procedures set forth in Section XX (Dispute Resolution).

4           5. If EPA concludes, based on the initial or any  
5 subsequent report(s) requesting Certification of Completion and  
6 after a reasonable opportunity for review and comment by the  
7 State, that the O&M Activities, except for dismantling or  
8 decommissioning activities, have been fully performed in  
9 accordance with this Consent Decree, EPA will so certify in  
10 writing to all Settling Defendants. This certification shall  
11 constitute the Certification of Completion of the O&M Activities  
12 for purposes of this Consent Decree, including, but not limited  
13 to, Section XXII (Covenants Not to Sue by Plaintiffs).  
14 Certification of Completion of the O&M Activities shall not  
15 affect Settling Work Defendant's or any other Settling  
16 Defendant's other obligations under this Consent Decree,  
17 including, but not limited to, Lockheed Martin's obligation to  
18 dismantle or decommission the treatment and blending facilities,  
19 if such dismantling and/or decommissioning activities are not  
20 complete at the time the Certification of Completion issues.

21           6. As to Lockheed Martin, the Certification of  
22 Completion shall not apply until Lockheed Martin has completed  
23 any dismantling and/or decommissioning activities EPA may require  
24 pursuant to this Section.

25       B. Dismantling and/or Decommissioning of Facilities.

26           1. If, during the 90-day period referenced in  
27 Paragraph A.1 of this Section, EPA determines that dismantling  
28

1 and/or decommissioning of the treatment and/or blending  
2 facilities is required, Lockheed Martin shall, if requested by  
3 EPA, submit a work plan for such activities to EPA, with a copy  
4 to the State, in accordance with Section XII of this Consent  
5 Decree (Submissions Requiring Agency Approval). At least ninety  
6 (90) days prior to the date Lockheed Martin anticipates that  
7 dismantling and/or decommissioning activities will have been  
8 fully completed, Lockheed Martin shall submit a written report to  
9 EPA requesting approval of such work, and confirmation that such  
10 work is complete, with a copy to the State, pursuant to Section  
11 XII (Submissions Requiring Agency Approval).

12           2. The report and EPA's response to the report,  
13 including but not limited to an inspection of the work and/or a  
14 notice concerning additional work to be performed, shall conform  
15 to the applicable requirements, as determined by EPA, of  
16 Paragraph A.2-5 of this Section.

17           3. If EPA has determined that dismantling and/or  
18 decommissioning is required and confirms that such work is  
19 complete, EPA shall promptly issue a Certificate of Completion to  
20 Lockheed Martin, with a copy to the State. If EPA has determined  
21 that dismantling and/or decommissioning is not required, it shall  
22 issue a Certificate of Completion to Lockheed Martin promptly  
23 upon making that determination.

1 XVI. EMERGENCY RESPONSE

2 In the event of any action or occurrence during the  
3 performance of the O&M Activities which causes or threatens a  
4 release of Waste Material from the Site that constitutes an  
5 emergency situation or may present an immediate threat to public  
6 health or welfare or the environment, Settling Work Defendant  
7 shall, subject to this Section, immediately take all appropriate  
8 action to prevent, abate, or minimize such release or threat of  
9 release. Settling Work Defendant shall report such a situation  
10 to the appropriate regulatory authorities as required by law. As  
11 soon as possible and reasonable under the circumstances, but in  
12 no event more than one Working Day after making the report  
13 required by law, Settling Work Defendant shall notify EPA's  
14 Project Coordinator, or if the Project Coordinator is  
15 unavailable, EPA's Alternate Project Coordinator. If neither of  
16 these individuals is available, Settling Work Defendant shall  
17 notify the Emergency Response Unit, EPA, Region IX. Settling  
18 Work Defendant shall take such actions in consultation with EPA's  
19 Project Coordinator or other available authorized EPA officer and  
20 in accordance with all applicable provisions of the Health and  
21 Safety Plans, the Contingency Plans, and any other applicable  
22 plans or documents developed pursuant to the Second Stage SOW or  
23 the Second Stage O&M Work Plan. In the event that Settling Work  
24 Defendant fails to take appropriate response action as required  
25 by this Section, and EPA or, as appropriate, the State takes such  
26 action instead, Settling Work Defendant shall reimburse EPA and  
27 the State all costs of the response action not inconsistent with  
28

1 the NCP pursuant to Section XVII (Reimbursement of Response  
2 Costs).

3 Nothing in the preceding Paragraph or in this Consent  
4 Decree shall be deemed to limit any authority of the United  
5 States, or the State, to take, direct, or order all appropriate  
6 action or to seek an order from the Court to protect human health  
7 and the environment or to prevent, abate, respond to, or minimize  
8 an actual or threatened release of Waste Material on, at, or from  
9 the Site.

10 XVII. REIMBURSEMENT OF RESPONSE COSTS

11 A. Within sixty (60) days of the Effective Date of this  
12 Consent Decree as defined in Section XXVIII (Effective Date),  
13 Lockheed Martin shall:

14 1. Pay to the United States \$ 11,827,869 in the form  
15 of an EFT to the U.S. Department of Justice Lockbox referencing  
16 the San Fernando Valley Superfund Site/Burbank Operable Unit, and  
17 referencing CERCLA Number SSID #59, DOJ Case Number 90-11-2-442  
18 and USAO File No. 91-03-463 in reimbursement of Past Basin-wide  
19 Response Costs.

20 2. Provide written verification to EPA regarding EFT  
21 transfers pursuant to this Section as specified in Section XXVII  
22 (Notices and Submissions).

23 3. Pay to the State \$ 22,348.60 in reimbursement of  
24 Past Basin-wide Response Costs incurred by the State and  
25 \$ 25,264.14 in reimbursement of Past Site-Specific Response Costs  
26 incurred by the State in the form of a certified check or checks  
27 made payable to the State of California, Department of Toxic  
28

Substances Control, Project No. 300173. Lockheed Martin shall send the certified check(s) to: Department of Toxic Substances Control, Accounting Office, 400 P Street, 4th floor, Sacramento, California, 95814.

B. Lockheed Martin shall reimburse the United States and the State for all Future Site-Specific Response Costs not inconsistent with the National Contingency Plan incurred by the United States and the State. The United States and the State will send Lockheed Martin bills for Future Site-Specific Response Costs incurred by EPA, DOJ, the State and their contractors no more frequently than annually; provided, however, that failure to include all such costs in the submittal during any calendar year will not preclude EPA or the State from submitting such costs in any subsequent year. EPA's Agency Financial Management System Summary Data (SCORES) Report or equivalent shall constitute documentation of EPA's costs. Lockheed Martin shall make payment within sixty (60) days of the date of each bill requiring payment, except as otherwise provided in this Section, Paragraphs C and D. Lockheed Martin shall make all payments required by this Paragraph in the following manner: Lockheed Martin shall transmit such amounts in the form of a EFT to the U.S. Department of Justice Lockbox referencing the San Fernando Valley Superfund Site/Burbank Operable Unit, and referencing CERCLA Number SSID # L6, DOJ Case Number 90-11-2-442 and USAO File No. 91-03-463.

C. Lockheed Martin may contest a bill for Future Site-Specific Response Costs under this Section and Paragraph if it determines that the United States or the State has made an



1 accounting error or if it alleges that a cost item that is  
2 included represents costs that are inconsistent with the NCP.  
3 Such objection shall be made in writing within sixty (60) days of  
4 receipt of the bill and must be sent to the United States (if the  
5 United States' accounting is being disputed) or the State (if the  
6 State's accounting is being disputed) pursuant to Section XXVII  
7 (Notices and Submissions). Any such objection shall specifically  
8 identify the contested Future Site-Specific Response Costs and  
9 the basis for objection. In the event of such an objection,  
10 Lockheed Martin shall within the sixty (60) day period pay all  
11 uncontested Future Site-Specific Response Costs to the United  
12 States or the State in the manner described in this Section,  
13 Paragraph B. Simultaneously, Lockheed Martin shall establish an  
14 interest-bearing escrow account in a federally-insured bank duly  
15 chartered in the State of California and remit to that escrow  
16 account funds equivalent to the amount of the contested Future  
17 Site-Specific Response Costs. Lockheed Martin shall send to the  
18 United States, as provided in Section XXVII (Notices and  
19 Submissions), and the State a copy of the transmittal letter and  
20 check paying the uncontested Future Site-Specific Response Costs,  
21 and a copy of the correspondence that establishes and funds the  
22 escrow account, including, but not limited to, information  
23 containing the identity of the bank and bank account under which  
24 the escrow account is established as well as a bank statement  
25 showing the initial balance of the escrow account.  
26 Simultaneously with establishment of the escrow account, within  
27 the sixty (60) day period, Lockheed Martin shall initiate the  
28

dispute resolution procedures in Section XX (Dispute Resolution).  
If the United States or the State prevails in the dispute or  
concerning any aspect of the contested costs in dispute, within  
five (5) days of the resolution of the dispute, Lockheed Martin  
shall pay the sums due (with accrued Interest) to the United  
States in the manner described in this Section, Paragraph B, or  
the State, if State costs are disputed, in the manner described  
in this Section, Paragraph A.3. If Lockheed Martin prevails  
concerning any aspect of the contested costs, Lockheed Martin  
shall pay that portion of the costs (plus associated accrued  
Interest) as to which it did not prevail to the United States or  
the State, if State costs are disputed in the manner described in  
this Section, Paragraph A.3 or B, as applicable; Lockheed Martin  
shall be disbursed any balance of the escrow account. The  
dispute resolution procedures set forth in this Paragraph in  
conjunction with the procedures set forth in Section XX (Dispute  
Resolution) shall be the exclusive mechanisms for resolving  
disputes regarding Lockheed Martin's obligation to reimburse the  
United States and the State for their Future Site-Specific  
Response Costs, including without limitation allegations of  
accounting errors or allegations that costs billed are  
inconsistent with the NCP.

D. In the event that any payment required by this Section,  
Paragraph A.1 is not made within sixty (60) days of the Effective  
Date of this Consent Decree (as defined by Section XXVIII),  
Lockheed Martin shall pay Interest on the unpaid balance. The  
Interest to be paid shall begin to accrue sixty (60) days after

1 the Effective Date of this Consent Decree. Interest shall accrue  
2 at the rate specified through the date of Lockheed Martin's  
3 payment. Payments of Interest made under this Paragraph shall be  
4 in addition to such other remedies or sanctions available to  
5 Plaintiffs by virtue of a failure to make timely payments under  
6 this Section.

7 **XVIII. INDEMNIFICATION AND INSURANCE**

8 The United States and the State do not assume any liability  
9 by entering into this Consent Decree or by virtue of any  
10 designation of Settling Work Defendant or any other defendant who  
11 performs work pursuant to this Consent Decree as EPA's authorized  
12 representative under Section 104(e) of CERCLA, 42 U.S.C.  
13 § 9604(e). Settling Work Defendant, with respect to response  
14 activities performed by Settling Work Defendant, and other  
15 Settling Defendants with respect to response activities performed  
16 by them, if any, shall indemnify, save and hold harmless the  
17 United States, the State and their officials, agents, employees,  
18 contractors, subcontractors, or representatives for or from any  
19 and all claims or causes of action arising from, or on account  
20 of, acts or omissions of such Settling Defendant, its officers,  
21 employees, agents, contractors, subcontractors, and any persons  
22 acting on its behalf or under its control, in carrying out  
23 activities pursuant to this Consent Decree, including, but not  
24 limited to, any claims arising from the designation of Settling  
25 Work Defendant or any other Settling Defendant as EPA's  
26 authorized representative under Section 104(e) of CERCLA, 42  
27 U.S.C. § 9604(e). Further, such Settling Defendant agrees to pay  
28

1 the United States and the State all costs they incur including,  
2 but not limited to, attorneys fees and other expenses of  
3 litigation and settlement arising from, or on account of, claims  
4 made against the United States or the State based on acts or  
5 omissions of such Settling Defendant, its officers, employees,  
6 agents, contractors, subcontractors, and any persons acting on  
7 its behalf or under its control, in carrying out activities  
8 pursuant to this Consent Decree. Neither the United States nor  
9 the State shall be held out as a party to any contract entered  
10 into by or on behalf of such Settling Defendant in carrying out  
11 activities pursuant to this Consent Decree. Neither such  
12 Settling Defendant nor any such contractor shall be considered an  
13 agent of the United States or the State.

14 A. Settling Defendants waive all claims against the United  
15 States and the State for damages or reimbursement or for set-off  
16 of any payments made or to be made to the United States or the  
17 State arising from or on account of any contract, agreement, or  
18 arrangement between such Settling Defendants and any person for  
19 performance of O&M Activities on or relating to the Site,  
20 including, but not limited to, claims on account of construction  
21 delays. In addition, such Settling Defendant shall indemnify and  
22 hold harmless the United States and the State with respect to any  
23 and all such claims for damages or reimbursement arising from or  
24 on account of any contract, agreement, or arrangement between any  
25 one or more of Settling Defendants and any person for performance  
26 of O&M Activities on or relating to the Site, including, but not  
27 limited to, claims on account of construction delays.  
28

B. No later than thirty (30) days prior to the Date of Commencement, Settling Work Defendant shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion pursuant to Section XV (Certification of Completion), comprehensive general liability insurance with limits of not less than \$ 20 million dollars (\$ 20,000,000) combined single limit each occurrence, and in the annual aggregate, ten million (\$ 10,000,000) of which is dedicated to the Interim Remedial Action, naming as additional insureds the United States and the State. In addition, for the duration of this Consent Decree, Settling Work Defendant shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the O&M Activities on behalf of Settling Work Defendant in furtherance of this Consent Decree. Prior to commencement of the O&M Activities under this Consent Decree, Settling Work Defendant shall provide to EPA and the State certificates of such insurance and a copy of each insurance policy. Settling Work Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the Date of Commencement. If Settling Work Defendant demonstrates by evidence satisfactory to EPA and the State that its contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Work Defendant need provide only that portion of the insurance described above which is not maintained by the

contractor or subcontractor. If Settling Work Defendant fails to submit proof of insurance as described in this Paragraph, and no other Settling Defendant submits such proof, EPA shall have the right to take over all of the work required by this Consent Decree with respect to the Upstream Facilities, and the City of Burbank shall continue to fund and perform all of the work required by this Consent Decree with respect to the Downstream Facilities. If EPA takes over the work required by this Consent Decree with respect to the Upstream Facilities pursuant to this Section and Paragraph, Lockheed Martin shall fund EPA's performance of such work pursuant to Section XIV (Funding of Response Activities), Paragraph H.2.b-c of this Consent Decree. If EPA takes over such work pursuant to this Section and Paragraph, the City of Burbank shall not be required to reimburse Lockheed Martin for any portion of the costs incurred by EPA to take over and/or to perform such work.

C. If Settling Work Defendant obtains insurance as described in this paragraph, and such insurance is subsequently cancelled, Settling Work Defendant shall so notify EPA within ten (10) days of Settling Work Defendant's receipt of notice that such insurance had been cancelled. Furthermore, in the event of such cancellation, equivalent insurance for the O&M Activities shall be obtained as soon as reasonably practicable, and proof of such insurance shall be submitted by Settling Work Defendant to EPA within ten (10) days of such insurance being obtained. Delays in the O&M Activities or EPA's decision to take over the work due to the failure to obtain or submit proof of insurance

1 shall not constitute a force majeure event under this Consent  
2 Decree.

3 D. In its bid documents, Settling Work Defendant shall  
4 require that all contractors submitting bids to become O&M  
5 Contractor agree to provide comprehensive general liability  
6 insurance in the amount specified in Paragraph B of this Section.  
7 Settling Work Defendant shall condition awarding the bid for O&M  
8 Contractor upon a contractor's ability to provide the  
9 comprehensive general liability insurance specified in Paragraph  
10 B of this Section. The contract entered into between the  
11 Settling Work Defendant and the O&M Contractor shall require the  
12 O&M Contractor to provide worker's compensation insurance in  
13 compliance with all applicable laws and regulations and  
14 comprehensive general liability insurance as specified in  
15 Paragraph B of this Section. Settling Work Defendant's  
16 compliance with this Paragraph shall constitute compliance with  
17 its obligation in Paragraph B of this Section to secure and  
18 retain insurance, provided the O&M Contractor complies with its  
19 obligations to provide the comprehensive general liability  
20 insurance specified in Paragraph B of this Section.

21 E. In addition to the insurance required by this Section,  
22 Lockheed Martin, the Settling Work Defendant, and the UAO Parties  
23 hereby agree among themselves that the Upstream Facilities and  
24 Blending Facility shall be insured by additional coverages as set  
25 forth in Exhibit 3 to this Consent Decree, and Lockheed Martin  
26 agrees to fund such coverages through the O&M Trust Fund.

27 1. The Settling Work Defendant will promptly and  
28

1 diligently make and pursue claims against any available insurance  
2 for reimbursement of costs and expenses of any repairs or other  
3 work required as a result of an alleged Design Defect as  
4 described in Section XIV, Paragraph M, will not receive  
5 reimbursement under Section XIV, Paragraph M for any such costs  
6 and expenses that are recovered from insurance, and will refund  
7 to Lockheed Martin and/or the UAO Parties any monies paid by  
8 Lockheed Martin and/or the UAO Parties for costs and expenses  
9 which are subsequently paid by insurance.

10           2.    The obligations set forth in Paragraph E.1 of this  
11 Section shall not be the subject of stipulated penalties or  
12 enforceable by Plaintiffs.

13           3.    EPA agrees that disputes arising with regard to  
14 Exhibit 3 to this Consent Decree may be submitted to dispute  
15 resolution under Section XX (Dispute Resolution), Paragraph G of  
16 this Consent Decree.

17           4.    Nothing in this Paragraph shall affect the  
18 obligations of Lockheed Martin, Settling Work Defendant or the  
19 UAO Parties pursuant to Section XIV of this Consent Decree  
20 (Funding of Response Activities).

21 XIX.   FORCE MAJEURE

22           A.    "Force majeure," for purposes of this Consent Decree, is  
23 defined as any event arising from causes beyond the control of a  
24 Settling Defendant or of any entity controlled by such Settling  
25 Defendant, including, but not limited to, its contractors and  
26 subcontractors, that delays or prevents the performance of any  
27 obligation under this Consent Decree despite such Settling  
28



1 Defendant's best efforts to fulfill the obligation. The  
2 requirement that the Settling Defendant exercise "best efforts to  
3 fulfill the obligation" includes using best efforts to anticipate  
4 any potential force majeure event and best efforts to address the  
5 effects of any potential force majeure event (1) as it is  
6 occurring and (2) following the potential force majeure event,  
7 such that the delay is minimized to the greatest extent possible.  
8 "Force majeure" does not include financial inability to complete  
9 the O&M Activities or a failure to attain the Performance  
10 Standards.

11 B. If any event occurs or has occurred that may delay the  
12 performance of any O&M Activities under this Consent Decree, or  
13 any other response activities performed under this Consent  
14 Decree, whether or not caused by a force majeure event, the  
15 Settling Defendant responsible for performing the activities  
16 shall notify orally EPA's Project Coordinator or, in his or her  
17 absence, EPA's Alternate Project Coordinator or, in the event  
18 both of EPA's designated representatives are unavailable, the  
19 Director of the Superfund Division, EPA Region IX, as soon as  
20 possible under the circumstances. It shall be presumed that  
21 notice not made within two (2) Working Days of when such Settling  
22 Defendant first knew or should have known that the event might  
23 cause a delay is untimely unless evidence credible to EPA and to  
24 the contrary is provided to EPA by the Settling Work Defendant.  
25 Within ten (10) days thereafter, such Settling Defendant shall  
26 provide in writing to EPA and the State an explanation and  
27 description of the reasons for the delay; the anticipated  
28

duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Unless the force majeure event is a natural catastrophe or similar event which inherently justifies departure from the above requirements, failure to comply with the above requirements shall preclude Settling Defendant from asserting any claim of force majeure for that event. A Settling Defendant shall be deemed to have notice of any circumstance of which its contractors or subcontractors had or should have had notice.

C. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of

1 itself, extend the time for performance of any other obligation.  
2 If EPA, after a reasonable opportunity for review and comment by  
3 the State, does not agree that the delay or anticipated delay has  
4 been or will be caused by a force majeure event, EPA will notify  
5 the Settling Defendant claiming force majeure in writing of its  
6 decision. If EPA, after a reasonable opportunity for review and  
7 comment by the State, agrees that the delay is attributable to a  
8 force majeure event, EPA will notify the Settling Defendant  
9 claiming force majeure in writing of the length of the extension,  
10 if any, for performance of the obligations affected by the force  
11 majeure event. Notification to EPA of any other claimed force  
12 majeure event affecting other obligations of parties to this  
13 Consent Decree shall be made by the party claiming force majeure  
14 in writing to EPA within five (5) Working Days of when such party  
15 knew or should have known that the event might cause a delay in  
16 such party's obligations. It shall be presumed that notice not  
17 made within such time is untimely unless evidence credible to EPA  
18 and to the contrary is provided to EPA by such party.

19 D. If the Settling Defendant claiming force majeure elects  
20 to invoke the dispute resolution procedures set forth in Section  
21 XX (Dispute Resolution), it shall do so no later than fifteen  
22 (15) days after receipt of EPA's notice. In any such proceeding,  
23 the Settling Defendant shall have the burden of demonstrating by  
24 a preponderance of the evidence that the delay or anticipated  
25 delay has been or will be caused by a force majeure event, that  
26 the duration of the delay or the extension sought was or will be  
27 warranted under the circumstances, that best efforts were  
28

exercised to avoid and mitigate the effects of the delay, and that the Settling Defendant complied with the requirements of this Section, Paragraphs A and B, above or was excused from such compliance under the terms of this Decree. If the Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by such Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XX. DISPUTE RESOLUTION

A. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of a Settling Defendant that have not been disputed in accordance with this Section.

B. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other party a written Notice of Dispute.

C. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless,

1 within ten (10) days after the conclusion of the informal  
2 negotiation period, the Settling Defendant asserting that there  
3 is a dispute invokes the formal dispute resolution procedures of  
4 this Section by serving on the United States a written Statement  
5 of Position on the matter in dispute, including, but not limited  
6 to, any factual data, analysis or opinion supporting that  
7 position and any supporting documentation relied upon by such  
8 Settling Defendant. The Statement of Position shall specify the  
9 Settling Defendant's position as to whether formal dispute  
10 resolution should proceed under this Section XX, Paragraph F or  
11 G.

12 D. Within fourteen (14) days after receipt of the Settling  
13 Defendant's Statement of Position, EPA will serve on such  
14 Settling Defendant its Statement of Position, including, but not  
15 limited to, any factual data, analysis, or opinion supporting  
16 that position and all supporting documentation relied upon by  
17 EPA. EPA's Statement of Position shall include a statement as to  
18 whether formal dispute resolution should proceed under this  
19 Section XX, Paragraph F or G.

20 E. If there is disagreement between EPA and a Settling  
21 Defendant asserting there is a dispute as to whether dispute  
22 resolution should proceed under Section XX, Paragraph F or G, the  
23 parties to the dispute shall follow the procedures set forth in  
24 the Paragraph determined by EPA to be applicable. However, if  
25 the Settling Defendant ultimately appeals to the Court to resolve  
26 the dispute, the Court shall determine which Paragraph is  
27 applicable in accordance with the standards of applicability set  
28

1 forth in Section XX, Paragraphs F and G.

2 F. Formal dispute resolution for disputes pertaining to the  
3 selection or adequacy of any response action and all other  
4 disputes that are accorded review on the administrative record  
5 under applicable principles of administrative law shall be  
6 conducted pursuant to the procedures set forth in this Paragraph.  
7 For purposes of this Paragraph, the adequacy of any response  
8 action includes, without limitation: (1) the adequacy or  
9 appropriateness of plans, procedures to implement plans, or any  
10 other items requiring approval by EPA under this Consent Decree;  
11 and (2) the adequacy of the performance of response actions taken  
12 pursuant to this Consent Decree. Nothing in this Consent Decree  
13 shall be construed to allow any dispute by Settling Defendants  
14 regarding the validity of the ROD's provisions.

15 1. An administrative record of the dispute shall be  
16 maintained by EPA and shall contain all Statements of Position,  
17 including supporting documentation, submitted pursuant to this  
18 Paragraph. Where appropriate, EPA may allow submission of  
19 supplemental Statements of Position by the parties to the  
20 dispute.

21 2. The Director of the Superfund Division, EPA Region  
22 IX, will issue a final administrative decision resolving the  
23 dispute based on the administrative record described in this  
24 Section, Paragraph F.1. This decision shall be binding upon the  
25 Settling Defendant asserting that there is a dispute, subject  
26 only to the right to seek judicial review pursuant to this  
27 Section, Paragraphs F.3 and F.4.  
28

3. Any administrative decision made by EPA pursuant to this Section, Paragraph F.2 shall be reviewable by this Court, provided that a notice of judicial appeal is filed by the Settling Defendant with the Court and served on all parties within thirty (30) days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to the Settling Defendant's notice of judicial appeal.

4. In proceedings on any dispute governed by this Paragraph, the Settling Defendant asserting that there is a dispute shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to this Section, Paragraph F.1.

G. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

1. Following receipt of the Settling Defendant's Statement of Position submitted pursuant to Section XX, Paragraph C, the Director of the Superfund Division, EPA Region IX, will issue a final written decision resolving the dispute. The

Superfund Division Director's decision shall be binding on the Settling Defendant asserting that there is a dispute unless, within thirty (30) days of receipt of the decision, such Settling Defendant files with the Court and serves on the other party or parties a notice of judicial appeal setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant's notice of judicial appeal.

2. Notwithstanding Paragraph R of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law.

H. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation not directly in dispute of the Settling Defendant asserting that there is a dispute under this Consent Decree, unless EPA or the Court agrees otherwise. If a Settling Defendant prevails, the deadlines for any requirements which it could not practicably meet because of the dispute resolution proceedings shall be extended to account for any delays because of such proceedings. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Section XXI (Stipulated Penalties), Paragraph I. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first



day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties), unless EPA in its discretion elects not to assess some or all of such penalties.

XXI. STIPULATED PENALTIES

Unless excused by EPA or a force majeure event, a Settling Defendant shall be liable for stipulated penalties to the United States, as set forth in this Section, for each failure by such Settling Defendant to comply with the requirements of this Consent Decree. "Compliance" by the Settling Work Defendant shall include completion of the O&M activities under this Consent Decree or any work plan or deliverable approved under this Consent Decree or incorporated by this Consent Decree, in accordance with all applicable requirements of law, this Consent Decree, the Second Stage O&M Work Plan and any plans or other documents approved by EPA pursuant to this Consent Decree or any such work plan or deliverable, and within the specified time schedules established by and approved under this Consent Decree or any such work plan or deliverable.

A. Unless expressly stated otherwise in this Consent Decree, any reports, plans, specifications, schedules, deliverables, appendices, and attachments required by this Consent Decree, or implemented in whole or in part by this Consent Decree, are, upon approval by EPA, incorporated into this Consent Decree. A failure by the Settling Work Defendant to

1 comply with applicable EPA-approved reports, plans, specifica-  
2 tions, schedules, deliverables, appendices or attachments shall  
3 be considered a failure to comply with this Consent Decree and  
4 shall subject such Settling Work Defendant to stipulated  
5 penalties as provided in Paragraphs D through F of this Section.

6 B. Failure to comply with this Consent Decree shall also  
7 include but is not limited to the following:

8 1. Failure by Settling Work Defendant to submit  
9 deliverables specified in this Consent Decree in an acceptable  
10 manner and by the date due pursuant to this Consent Decree;  
11 provided, however, that if the failure to comply results from a  
12 determination by EPA that a written deliverable is inadequate,  
13 the Settling Work Defendant shall have ten (10) working days from  
14 receipt of EPA's written notice of disapproval, or such other  
15 longer time period as provided by EPA in the notice of  
16 disapproval, within which to correct the inadequacy and resubmit  
17 the deliverable for approval. Any disapproval by EPA shall  
18 include an explanation of why the deliverable is inadequate. If  
19 the resubmitted deliverable is inadequate, the Settling Work  
20 Defendant shall be deemed to be in violation of this Consent  
21 Decree.

22 2. Failure by Settling Work Defendant to use best  
23 efforts to obtain any permits necessary for offsite work which  
24 Settling Work Defendant is required to perform or failure by  
25 Settling Work Defendant to use best reasonable efforts to obtain  
26 necessary access agreements.

27 3. Failure by Settling Work Defendant to comply with  
28

any permit obtained for the purpose of implementing the requirements of this Consent Decree in any offsite location.

C. Stipulated penalties for failure to perform any requirement of this Consent Decree for which a deadline is specified shall begin to accrue on the first day after the deadline. Stipulated penalties for any other violation of this Consent Decree shall begin to accrue on the first day after a Settling Defendant subject to penalties receives notice from EPA of such violation. For any violation, stipulated penalties shall continue to accrue up to and including the day on which the non-compliance is corrected. EPA, in its sole discretion, may waive or reduce stipulated penalties. If EPA does not waive stipulated penalties, EPA shall provide the Settling Defendant subject to penalties with written notice of the alleged deficiency in compliance with this Consent Decree, and accrued stipulated penalties shall become payable thirty (30) days after such Settling Defendant's receipt of EPA's written notice of deficiency; provided, however, that if EPA provides notice of an alleged deficiency, and that deficiency continues, EPA shall not be required to provide any additional notice in order for stipulated penalties to continue to accrue and become payable.

D. Stipulated penalties shall accrue in the following amounts for the violations described in this Paragraph, and a Settling Defendant subject to such penalties may not dispute the amount of stipulated penalties due per type of violation:

1. Monthly Progress Reports and Other Periodic Reports  
Settling Work Defendant shall pay a stipulated

penalty of \$ 750 per day for the submission of a late or deficient periodic progress report.

2. MCL Effluent Violations

a. At any time if the concentration of TCE in the treated water is greater than 5.0 parts per billion ("ppb"), Settling Work Defendant shall be considered to have been out of compliance for each day for which the representative treated water sample indicates that the concentration of TCE was greater than 5.0 ppb. Settling Work Defendant shall be subject to stipulated penalties in the amount of \$ 3,750 per day for each such day of noncompliance.

b. At any time if the concentration of PCE in the treated water is greater than 5.0 ppb, Settling Work Defendant shall be considered to have been out of compliance for each day for which the representative treated water sample indicates that the concentration of PCE was greater than 5.0 ppb. Settling Work Defendant shall be subject to stipulated penalties in the amount of \$ 3,750 per day for each such day of noncompliance.

c. At any time if the concentration of a volatile organic compound ("VOC") other than TCE or PCE in the treated water is greater than the MCL in effect at that time for such VOC, Settling Work Defendant shall be considered to have been out of compliance for each day for which the representative treated water sample indicates that the concentration of that VOC was greater than the MCL in effect, provided that the MCL in effect was promulgated on or before the Effective Date of this Consent Decree. Settling Work Defendant shall be subject to stipulated

penalties in the amount of \$ 3,750 per day for each such day of noncompliance.

d. At any time after the first sixty (60) days after an analytical sample result shows that the concentration of a contaminant in the treated water other than a VOC or nitrate is greater than the MCL in effect at that time for such contaminant, Settling Work Defendant shall be considered to have been out of compliance for each day for which the representative treated water sample indicates that the concentration of that contaminant was greater than the MCL in effect, provided that the MCL in effect was promulgated on or before the Effective Date of this Consent Decree. Settling Work Defendant shall be subject to stipulated penalties in the amount of \$ 2,250 per day for each such day of noncompliance.

#### E. Class I Violations

Stipulated penalties shall accrue in the following amounts for the violations described in this Paragraph, and a Settling Defendant subject to such penalties may not dispute the amount of stipulated penalties due per type of violation:

<u>Period of Noncompliance</u>	<u>Penalty Per Day Per Violation</u>
--------------------------------	--------------------------------------

Days 1 - 5	\$ 750
------------	--------

Days 6 - 30	\$ 2,250
-------------	----------

After 30 Days	\$ 3,750
---------------	----------

1. Each failure to comply in a timely and adequate manner with the terms of this Consent Decree or any work plan implemented in whole or in part by this Consent Decree, that is not specifically listed as a violation elsewhere under this

Section, and specifically including any failure to comply with the substantive standards of any applicable or relevant and appropriate requirement ("ARAR") identified in the ROD (as modified by the ESD and SOW) and not identified as a violation under Paragraphs D through F of this Section.

2. Failure by Settling Work Defendant to submit any of the following:

- i. Draft Second Stage Operations and Maintenance Work Plan
- ii. Draft Second Stage Operations and Maintenance Staffing Plan
- iii. Draft Second Stage Operations and Maintenance Time Line and Schedule
- iv. Draft Quality Assurance Project Plan
- v. Draft Health and Safety Plan

3. Violation by Settling Work Defendant of ARARs, other than MCL violations, and South Coast Air Quality Management District Regulation XIII.

F. Class II Violations

Stipulated penalties shall accrue in the following amounts for the violations described in this Paragraph, and a Settling Defendant subject to such penalties may not dispute the amount of stipulated penalties due per type of violation:

Period of Noncompliance    Penalty Per Day Per Violation

Days 1 - 5	\$ 1,500
Days 6 - 30	\$ 3,500
After 30 Days	\$ 10,000

1 Each violation by Settling Work Defendant of the following:

2 i. Obligation to hold Final Inspection(s)

3 Failure by Settling Work Defendant to submit any of the  
4 following:

5 i. Second Stage Operations and Maintenance Work Plan

6 ii. Second Stage Operations and Maintenance Staffing  
7 Plan

8 iii. Second Stage Operations and Maintenance Time Line  
9 and Schedule

10 iv. Notification of Selection of O&M  
11 Contractors/Subcontractors

12 v. Quality Assurance Project Plan

13 vi. Health and Safety Plan

14 Failure by Settling Work Defendant to comply with any of the  
15 following:

16 i. Quality Assurance Project Plan

17 ii. Health and Safety Plan

18 iii. Second Stage O&M Work Plan

19 G. Payments of stipulated penalties shall be made by a  
20 Settling Defendant as follows:

21 1. Stipulated penalties assessed for failure to make  
22 full and timely payment to the O&M Trust Account pursuant to  
23 Section XIV (Funding of Response Activities) or to the United  
24 States pursuant to Section XVII (Reimbursement of Response Costs)  
25 shall be paid by Lockheed Martin. Lockheed Martin shall not be  
26 subject to stipulated penalties for failure to fund insurance  
27 costs for insurance coverages described solely in Exhibit 3 to  
28

1 this Consent Decree.

2           2. Stipulated penalties for failure to make full and  
3 timely payment pursuant to Paragraph M of Section XIV (Funding of  
4 Response Activities) of this Consent Decree shall be paid by  
5 Lockheed Martin or the UAO Parties according to the EPA  
6 Preliminary Finding and/or Further Determination required by that  
7 Section and Paragraph. Stipulated penalties for failure to make  
8 payments pursuant to Paragraph N of Section XIV (Funding of  
9 Response Activities) shall be paid by Lockheed Martin, the  
10 Settling Cash Defendants or the City of Burbank in accordance  
11 with their obligations under that Section and Paragraph.

12           3. Except for stipulated penalties which arise due to  
13 Lockheed Martin's or the UAO Parties' failure to comply with  
14 their obligations under Section XIV (Funding of Response  
15 Activities) as described in this Paragraph, all other stipulated  
16 penalties assessed for failure to comply with Section VI  
17 (Performance of the Work By Settling Defendants) shall be the  
18 responsibility of and be paid by the City of Burbank. No such  
19 stipulated penalties shall be paid or reimbursed from the O&M  
20 Trust Account.

21           H. If a Settling Defendant fails to pay stipulated  
22 penalties in accordance with this Section, the United States may  
23 institute proceedings in this action or a new action to collect  
24 the penalties and any Interest due. Notwithstanding the  
25 stipulated penalties provided for in this Section, and to the  
26 extent authorized by law, EPA may elect to assess civil penalties  
27 or bring an action in District Court to enforce the provisions of  
28



1 this Consent Decree. Payment of stipulated penalties shall not  
2 preclude EPA from electing to pursue any other remedy or sanction  
3 it may have to enforce this Consent Decree, and nothing in this  
4 Decree shall preclude EPA from seeking statutory penalties  
5 against a Settling Defendant who violates statutory or regulatory  
6 requirements, except that the total civil penalties (including  
7 stipulated penalties) collected by EPA for any such violation  
8 shall not exceed \$ 25,000 per day per violation.

9 I. A Settling Defendant may dispute any notice of  
10 deficiency issued to it. Penalties shall continue to accrue as  
11 provided in this Section but need not be paid until the  
12 following:

13 1. If the dispute is resolved by agreement or by  
14 decision or order of EPA which is not appealed to this Court,  
15 accrued penalties, plus Interest, shall be paid to EPA within  
16 thirty (30) days of the agreement or Settling Defendant's receipt  
17 of EPA's decision or order;

18 2. If the Settling Defendant appeals EPA's decision  
19 pursuant to Section XX (Dispute Resolution) and prevails upon  
20 final resolution of the dispute, no stipulated penalties or  
21 Interest thereon will be payable and any assessment of stipulated  
22 penalties and Interest thereon shall be set aside in writing by  
23 EPA;

24 3. If the Settling Defendant appeals EPA's decision  
25 pursuant to Section XX (Dispute Resolution) and does not prevail  
26 upon final resolution of the dispute, all accrued stipulated  
27 penalties, plus Interest shall be paid within thirty (30) days of  
28

1 a final Court order.

2           4. If a Settling Defendant appeals EPA's decision to  
3 this Court and the Court's decision is appealed by any Party, the  
4 Settling Defendant shall pay all accrued penalties determined by  
5 the District Court to be owing to the United States into an  
6 interest-bearing escrow account within sixty (60) days of receipt  
7 of the Court's decision or order. Penalties determined by the  
8 Court to be accruing shall be paid into this account as they  
9 continue to accrue, at least every sixty (60) days. Within  
10 fifteen (15) days of receipt of the final appellate court  
11 decision, the escrow agent shall pay the balance of the account  
12 to EPA or to the Settling Defendant to the extent that it  
13 prevails.

14           J. In the event that EPA assumes performance of a portion  
15 or all of the O&M Activities pursuant to Paragraph F of Section  
16 XXII (Covenants Not to Sue by Plaintiffs), Settling Work  
17 Defendant shall remain liable for any stipulated penalties that  
18 have accrued or that may accrue under this Consent Decree.

19           K. All penalties owed to the United States under this  
20 section shall be due and payable within thirty (30) days of the  
21 Settling Defendant's receipt from EPA of a demand for payment of  
22 the penalties, unless the Settling Defendant invokes the dispute  
23 resolution procedures under Section XX (Dispute Resolution). All  
24 payments under this Section shall be transmitted via EFT to the  
25 U.S. Department of Justice Lockbox, and shall reference CERCLA  
26 Number SSID # L6, DOJ Case Number 90-11-2-442 and USAO File NO.  
27 91-03-463. Written verification of EFTs pursuant to this Section  
28

1 shall be sent to the United States as provided in Section XXVII  
2 (Notices and Submissions).

3 L. The payment of penalties shall not alter in any way the  
4 Settling Work Defendant's obligation to complete the performance  
5 of the O&M Activities required under this Consent Decree.

6 M. If a Settling Defendant fails to pay stipulated  
7 penalties when due, the United States may institute proceedings  
8 to collect the penalties, as well as Interest. The Settling  
9 Defendant shall pay Interest on the unpaid balance, which shall  
10 begin to accrue thirty (30) days after the date of demand made  
11 pursuant to this Section, Paragraph K.

12 N. Nothing in this Consent Decree shall be construed as  
13 prohibiting, altering, or in any way limiting the ability of the  
14 United States or the State to seek any other remedies or  
15 sanctions available by virtue of a Settling Defendant's violation  
16 of this Consent Decree or of the statutes and regulations upon  
17 which it is based, including, but not limited to, penalties  
18 pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9622(1).

19 XXII. COVENANTS NOT TO SUE BY PLAINTIFFS

20 In consideration of the actions that will be performed  
21 and/or the payments that will be made by the Settling Defendants  
22 under the terms of the Consent Decree, and except as specifically  
23 provided in this Section, the United States covenants not to sue  
24 or to take administrative action against Settling Defendants  
25 and/or the Released Parties pursuant to Sections 106 and 107(a)  
26 of CERCLA and Section 7003 of RCRA, and the State covenants not  
27 to sue or to take administrative action pursuant Section 107(a)  
28

of CERCLA, and to Chapters 6.5, Sections 25100 et seq., and 6.8 Sections 25300 et seq. of the California Health and Safety Code for all Covered Matters expressly specified in Section XXIV (Effect of Settlement; Contribution Protection), Paragraph C. As to each Settling Defendant and its related Released Parties, these covenants not to sue are conditioned upon the complete and satisfactory performance by such Settling Defendant of its then-current obligations under this Consent Decree and shall remain in effect as to each Settling Defendant and its related Released Parties until and unless such Settling Defendant is not in compliance with the obligations imposed upon it by this Consent Decree. As to each Settling Defendant, Related Settling Defendant, or Related Released Party, as described in Appendix 1 to this Consent Decree, these covenants not to sue are conditioned upon the complete and satisfactory performance by that party's principal Settling Defendant of its then-current obligations pursuant to Section XIV (Funding of Response Actions) of this Consent Decree. These covenants not to sue extend only to each Settling Defendant and its related Released Parties. These covenants not to sue do not extend to any other person. No person otherwise liable independent of liability associated with its status as a corporate or institutional predecessor or successor to a Settling Defendant or Related Released Party shall benefit from this provision.

A. United States' Pre-certification Reservations.

Except as to the parties listed in Appendix 3, and notwithstanding any other provision of this Consent Decree, the

United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants, Released Parties, or any of them (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to Certification of Completion of O&M Activities pursuant to Section XV (Certification of Completion) of this Consent Decree:

(i) conditions at the Site, previously unknown to EPA, are discovered, or

(ii) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicate that the Remedial Action or the O&M Activities are not protective of human health or the environment.

B. Except as to the parties listed in Appendix 3, the United States also reserves the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants, Released Parties, or any of them to (1) perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the O&M Activities, (a) the Settling Work Defendant substantially fails and/or refuses to perform the O&M Activities, or (b) an earthquake or Uninsurable Force Majeure Event causes Major Damage

( (

1 (as defined in Section XIV (Funding of Response Activities),  
2 Paragraph N) to the Plant Facilities, and EPA has reserved its  
3 rights in such circumstances in that Section and Paragraph.

4 C. United States' Post-certification Reservations. Except  
5 as to the parties listed in Appendix 3, and notwithstanding any  
6 other provision of this Consent Decree, the United States  
7 reserves, and this Consent Decree is without prejudice to, the  
8 right to institute proceedings in this action or in a new action,  
9 or to issue an administrative order seeking to compel Settling  
10 Defendants, Released Parties, or any of them (1) to perform  
11 further response actions relating to the Site or (2) to reimburse  
12 the United States for additional costs of response if, subsequent  
13 to Certification of Completion of the O&M Activities pursuant to  
14 Section XV (Certification of Completion) of this Consent Decree:

15 (i) conditions at the Site, previously unknown to  
16 EPA, are discovered, or  
17 (ii) information, previously unknown to EPA, is  
18 received, in whole or in part,  
19 and these previously unknown conditions or this information  
20 together with any other relevant information indicate that the  
21 Remedial Action or the O&M Activities are not protective of human  
22 health or the environment.

23 D. For purposes of this Section, Paragraph A, the  
24 information and the conditions known to EPA shall include only  
25 that information and those conditions set forth in the ROD for  
26 the Site, the administrative record supporting the ROD, and  
27 information required to be and actually submitted to EPA pursuant  
28

to the First Consent Decree or UAO 92-12 prior to the date of lodging of this Consent Decree. For purposes of this Section, Paragraph C, the information received by and the conditions known to EPA shall include only that information and those conditions set forth in the ROD, the administrative record supporting the ROD, and any information received by or required to be and actually submitted to EPA pursuant to the requirements of the First Consent Decree, this Consent Decree or UAO 92-12 prior to Certification of Completion of the O&M Activities.

E. General Reservations of Rights. The covenants not to sue set forth above do not pertain to any matters other than the Covered Matters expressly specified in Section XXIV (Effect of Settlement; Contribution Protection), Paragraph C. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against a Settling Defendant or a Released Party with respect to all other matters, including but not limited to, the following:

(1) claims based on a failure by such Settling Defendant to meet a requirement of this Consent Decree;

(2) liability arising from the past, present, or future disposal, release, or threat of release of hazardous substances outside of the Site;

(3) liability for damages for injury to, destruction of, or loss of natural resources;

(4) liability for response costs that have been or may be incurred by any federal or State of California agency which is the trustee for natural resources and which has, or

may in the future, spend funds relating to the Site;

(5) criminal liability;

(6) liability for violations of federal or State of California law which occur during or after implementation of the Remedial Action or O&M Activities;

(7) liability for additional response actions as may be required pursuant to Section VII (Additional Response Actions) or VIII (Periodic Review) of this Consent Decree, to the extent Settling Defendants do not agree in this Consent Decree to fund and/or perform such response actions under this Consent Decree;

(8) liability for additional operable units or interim remedies at the Site, for other operable units outside the Site, or any interim or final Basin-wide response action; and

(9) liability for Future Basin-wide Response Costs, and any costs that the United States or the State will incur or have incurred related to the Site which are not within the definition of Past Site-Specific Response Costs, Future Site-Specific Response Costs, or Past Basin-wide Response Costs.

F. In the event EPA determines that Settling Work Defendant has failed to implement any provisions of the O&M Activities in an adequate or timely manner, EPA may perform any and all portions of the O&M Activities as EPA determines necessary. In such event, Lockheed Martin shall fund EPA's performance of such O&M Activities pursuant to Section XIV



( Funding of Response Activities), Paragraph H.2.b-c. Settling Work Defendant shall reimburse Lockheed Martin for that portion of EPA's costs incurred to fund EPA's takeover and/or performance of O&M Activities which is caused by the necessity for EPA to take over such O&M Activities from the Settling Work Defendant pursuant to this Section and Paragraph. If EPA takes over the performance of some or all of the O&M Activities pursuant to this Section and Paragraph, EPA shall issue a determination at the request of Settling Work Defendant or Lockheed Martin concerning which costs incurred by EPA were due to the necessity for EPA to take over such O&M Activities from the Settling Work Defendant. In no event shall the accounting of such costs for which the Settling Work Defendant may be required to reimburse Lockheed Martin pursuant to this Paragraph continue for a period longer than one year from EPA's takeover of such O&M Activities. Settling Work Defendant or Lockheed Martin may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination concerning such costs.

G. Settling Work Defendant may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that the Settling Work Defendant failed to implement a provision of the O&M Activities in an adequate or timely manner as arbitrary and capricious or otherwise not in accordance with law. Such dispute shall be resolved on the administrative record. Except as is necessary to address an imminent and substantial endangerment to human health or the environment, EPA shall provide Settling Work Defendant with ten

(10) days written notice of its intent to perform a portion or all of the O&M Activities. In the notice, EPA shall also describe the alleged deficiency. If the Settling Work Defendant disagrees with EPA's determination that it has failed to perform, in an adequate and timely manner, the O&M Activities required to be performed by this Consent Decree, and Settling Work Defendant desires to dispute EPA's determination in this regard, Settling Work Defendant shall invoke the dispute resolution provisions of Section XX (Dispute Resolution) within thirty (30) days of receiving written notice of EPA's intent. Invocation of dispute resolution shall not divest EPA of its right to perform the O&M Activities during the dispute. Upon receipt of notification that EPA intends to take over the performance of a portion or all of the O&M Activities, Settling Work Defendant's obligations to perform such O&M Activities pursuant to this Consent Decree shall terminate and stipulated penalties, if any are being incurred due to Settling Work Defendant's failure to perform such O&M Activities in a timely or adequate manner, shall cease to accrue against Settling Work Defendant for such failure.

H. Notwithstanding any other provision of this Consent Decree, the United States and the State retain all authority and reserve all rights to take any and all response actions authorized by law. However, the obligation, if any, of the Settling Defendants to reimburse the United States for taking such actions shall be governed by the provisions of this Consent Decree to the extent Settling Defendants comply with their obligations to fund or perform such response actions pursuant to

1 this Consent Decree.

2 XXIII. COVENANTS BY SETTLING DEFENDANTS

3 A. Settling Defendants hereby covenant not to sue and agree  
4 not to assert any claims or causes of action against the United  
5 States with respect to the Site or this Consent Decree,

6 including, but not limited to, any direct or indirect claim for  
7 reimbursement from the Hazardous Substance Superfund (established  
8 pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through  
9 CERCLA Sections 106(b)(2), 111, 112, 113, 42 U.S.C.

10 §§ 9606(b)(2), 9611, 9612, and 9613, or any other provision of  
11 law, any claim against the United States, including any  
12 department, agency or instrumentality of the United States under  
13 CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 or 9613, related to  
14 the Site except as expressly reserved in this Section, Paragraphs  
15 (A)(1), (2), or (3) of this Consent Decree or Section XVII,  
16 Paragraph B of the First Consent Decree, or any claims arising  
17 out of response activities at the Site. However, the Settling  
18 Defendants reserve, this Consent Decree is without prejudice to,  
19 and nothing in this Consent Decree shall be interpreted as  
20 waiving, abrogating or resolving:

21 (1) any claims which any Settling Defendant has or may  
22 have based upon any alleged liability of the United States  
23 Department of Defense, any branch or division thereof ("DOD"), or  
24 any predecessor agency to DOD for conditions at the Site pursuant  
25 to CERCLA Sections 106, 107, 113, 120 or 310, 42 U.S.C. §§ 9606,  
26 9607, 9613, 9620 or 9659 or RCRA Section 7002, 42 U.S.C. § 6972;

27 (2) any claims which any Settling Defendant has or may  
28

1 have with respect to the Site against the United States pursuant  
2 to any contract between any Settling Defendant and the United  
3 States or between any Settling Defendant and any government  
4 contractor(s) related to the Site; or

5 (3) actions against the United States based on  
6 negligent actions taken directly by the United States (not  
7 including oversight or approval of the Settling Defendants' plans  
8 or activities) that are brought pursuant to any statute other  
9 than CERCLA and for which the waiver of sovereign immunity is  
10 found in a statute other than CERCLA.

11 (4) actions against the State based on negligent  
12 actions taken directly by the State (not including oversight or  
13 approval of the Settling Defendants' plans or activities) that  
14 are brought pursuant to any statute or law other than CERCLA,  
15 RCRA, and Chapters 6.5, Sections 25100 et seq., and 6.8, Sections  
16 25300 et seq. of the California Health & Safety Code.

17 B. In agreeing to these reservations, the United States and  
18 the State do not admit liability on any such claims and expressly  
19 reserve any and all defenses that either of them may have to any  
20 such claims.

21 C. Except as expressly set forth in this Consent Decree,  
22 Settling Defendants do not waive any claim against and do not  
23 release or covenant not to sue the United States or the State  
24 with respect to any matter. Nothing in this Consent Decree shall  
25 be deemed to constitute preauthorization of a claim within the  
26 meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R.  
27 § 300.700(d).  
28

1 D. Settling Defendants hereby covenant not to sue and agree  
2 not to assert any claims or causes of action against the State  
3 with respect to the Site or this Consent Decree, including, but  
4 not limited to, (1) any direct or indirect claim for  
5 reimbursement from the Hazardous Waste Control Account, Hazardous  
6 Substance Account, or Hazardous Substance Cleanup Fund through  
7 Health and Safety Code section 25375 or any other provision of  
8 law; (2) any claim against the State under Sections 107 or 113 of  
9 CERCLA, 42 U.S.C. §§ 9607 or 9613, or Section 7003 of RCRA, 42  
10 U.S.C. § 9673; or (3) any other claims arising out of Settling  
11 Defendants' response activities at the Site, including but not  
12 limited to nuisance, trespass, taking, equitable indemnity and  
13 indemnity under California law, contribution under California and  
14 federal law, or strict liability under California law.

15 XXIV. EFFECT OF SETTLEMENT: CONTRIBUTION PROTECTION

16 A. Nothing in this Consent Decree shall be construed to  
17 create any rights in, or grant any cause of action to, any person  
18 not a Settling Defendant or a Released Party under this Consent  
19 Decree. The preceding sentence shall not be construed to waive  
20 or nullify any rights that any person not a signatory to this  
21 Consent Decree may have under applicable law. Each of the  
22 Parties expressly reserves any and all rights (including, but not  
23 limited to, any right to contribution), defenses, claims,  
24 demands, and causes of action which each party may have with  
25 respect to any matter, transaction, or occurrence relating in any  
26 way to the Site against any person not a Settling Defendant or  
27 Released Party under this Consent Decree.  
28

B. At such time as a judgment is entered and becomes final judicially approving this Consent Decree, each Settling Defendant hereby expressly waives any and all rights (including, but not limited to, any right to contribution, defenses, claims, demands, and causes of action under State of California or federal law) against all other Settling Defendants and Released Parties with respect to Covered Matters specified in Paragraph C of this Section. Notwithstanding the foregoing, any funding of the repair of earthquake damage ("Earthquake Funding") by Lockheed Martin pursuant to Section XIV (Funding of Response Activities), Paragraph N of this Consent Decree, is without prejudice to its right to assert claims against other Settling Defendants (except the Appendix 3 parties and Settling Work Defendant) for reimbursement of Earthquake Funding. No Settling Defendant (except the Appendix 3 parties and Settling Work Defendant) shall assert that any agreement which exists between any of the Settling Defendants at the time of entry of this Second Consent Decree acts as a bar or provides a defense to any reimbursement or contribution claim by any other Settling Defendant for Earthquake Funding. The provisions of this Paragraph specifically supersede the provisions of Paragraph B of Section XXII (Contribution Protection) of the First Consent Decree. With regard to claims by third parties for contribution against Settling Defendants and/or Released Parties for such Covered Matters specified in Paragraph C of this Section, the Parties hereto agree that the Settling Defendants and Released Parties are entitled to such protection from contribution actions or

claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2). Certain defendants have entered into private agreements with regard to certain matters which relate to those that form the subject matter of this Consent Decree; the waiver expressed in this Paragraph shall not operate to preclude enforcement of those private agreements.

C. The Covered Matters in this Consent Decree are:

1. EPA's and the State's Past Site-Specific Response Costs and Past Basin-wide Response Costs,
2. EPA's and the State's Future Site-Specific Response Costs,
3. all matters addressed in the First Consent Decree and this Consent Decree,
4. all matters addressed in UAO 92-12 through the period covered during this Consent Decree, and
5. all costs of implementing the O&M Activities and any other response activity to be performed under this Consent Decree, except to the extent this Consent Decree does not provide for one or more of the Settling Defendants to fund and/or to perform any part of such activities.

D. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for Covered Matters they will notify the United States and the State in writing no later than sixty (60) days prior to the initiation of such suit or claim.

E. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for

1 Covered Matters they will notify the United States and the State  
2 in writing within sixty (60) days of service of the complaint on  
3 them. In addition, Settling Defendants shall notify the United  
4 States and the State in writing within ten (10) days of service  
5 or receipt of any Motion for Summary Judgment and within ten (10)  
6 days of receipt of any order from a court setting a case for  
7 trial.

8 F. In any subsequent administrative or judicial proceeding  
9 initiated by the United States or the State for injunctive  
10 relief, recovery of response costs, or other appropriate relief  
11 relating to the Site, Settling Defendants shall not assert, and  
12 may not maintain, any defense or claim based upon the principles  
13 of waiver, res judicata, collateral estoppel, issue preclusion,  
14 claim-splitting, or other defenses based upon any contention that  
15 the claims raised by the United States or the State in the  
16 subsequent proceeding were or should have been brought in the  
17 instant case; provided, however, that nothing in this Paragraph  
18 affects the enforceability of the covenants not to sue set forth  
19 in Section XXII (Covenants Not to Sue by Plaintiffs).

20 G. Payment of all sums which a Settling Cash Defendant is  
21 obligated to pay pursuant to Section XIV (Funding of Response  
22 Activities) of this Consent Decree, comprises full settlement as  
23 to that Settling Cash Defendant, any related Released Party as  
24 described in Appendix 1, and any Related Settling Defendant as  
25 described in Appendix 1, for all Covered Matters and thus, such  
26 Settling Cash Defendants, Related Settling Defendants and related  
27 Released Parties are entitled to such protection from  
28



1 contribution actions or claims as is provided by CERCLA Section  
2 113(f)(2), 42 U.S.C. § 9613(f)(2).

3 XXV. ACCESS TO INFORMATION

4 A. Settling Defendants shall provide to EPA and the State,  
5 upon request, copies of all documents or portions thereof which  
6 are not privileged by the attorney-client privilege, the attorney  
7 work product doctrine, or any other privilege recognized by law,  
8 and information within their possession or control or that of  
9 their contractors or agents relating to response actions at the  
10 Site or to the implementation of this Consent Decree including,  
11 but not limited to, sampling, analysis, chain of custody records,  
12 manifests, trucking logs, receipts, reports, sample traffic  
13 routing, correspondence, or other documents or information  
14 related to the O&M Activities. Settling Defendants shall also  
15 make available to EPA and the State, for purposes of  
16 investigation or information gathering, their employees, agents,  
17 or representatives with knowledge of relevant facts concerning  
18 the performance of the O&M Activities.

19 B. Settling Defendants may assert confidentiality claims  
20 covering part or all of the documents or information submitted to  
21 Plaintiffs under this Consent Decree to the extent permitted by  
22 and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C.  
23 § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information  
24 determined to be confidential by EPA will be afforded the  
25 protection specified in 40 C.F.R. Part 2, Subpart B. If no claim  
26 of confidentiality accompanies documents or information when they  
27 are submitted to EPA and the State, or if EPA has notified  
28

1 Settling Defendants that the documents or information are not  
2 confidential under the standards of Section 104(e)(7) of CERCLA,  
3 the public may be given access to such documents or information  
4 without further notice to Settling Defendants.

5 C. The Settling Defendants may assert that certain  
6 documents, records and other information are privileged under the  
7 attorney-client privilege, the attorney work product doctrine, or  
8 any other privilege recognized by law. In the case of documents,  
9 if a Settling Defendant asserts such a privilege in lieu of  
10 providing documents, it shall provide the Plaintiffs with the  
11 following: (1) the title of the document, record, or  
12 information; (2) the date of the document, record, or  
13 information; (3) the name and title of the author of the  
14 document, record, or information; (4) the name and title of each  
15 addressee and recipient; (5) a description of the contents of the  
16 document, record, or information; and (6) the privilege asserted  
17 by such Settling Defendant. However, no documents, reports or  
18 other information created or generated pursuant to the  
19 requirements of this Consent Decree shall be withheld on the  
20 grounds that they are privileged. If a claim of privilege  
21 applies only to a portion of a document, the document shall be  
22 provided to EPA in redacted form.

23 D. No claim of confidentiality or privilege shall be made  
24 with respect to any document that falls within Section  
25 104(e)(7)(F) of CERCLA, 42 U.S.C. § 9604(e)(7)(F).  
26  
27  
28

XXVI. RETENTION OF RECORDS

A. Until ten (10) years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph B.2 of Section XV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the O&M Activities or liability of any person for response actions conducted and to be conducted at the Site, regardless of any document retention policy to the contrary. Until ten (10) years after Settling Defendants' receipt of EPA's notification pursuant to Paragraph A.2 of Section XV (Certification of Completion), Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the O&M Activities.

B. At the conclusion of this document retention period, Settling Defendants shall notify the United States and the State at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States or the State such Settling Defendant shall deliver any such records or documents to EPA or the State. A Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege, the attorney work product doctrine, or any other privilege recognized by law. In the case of documents, if a Settling Defendant asserts such a privilege, it shall provide the Plaintiffs with the following:

(1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information: and (6) the privilege asserted by the Settling Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of the document, it shall be provided to EPA in redacted form.

C. Each Settling Defendant hereby certifies, individually, that it has not willfully and for an improper purpose altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that to the best of its knowledge, that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. § 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

## XXVII. NOTICES AND SUBMISSIONS

A. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below,

1 unless those individuals or their successors give notice of a  
2 change to the other parties in writing. All notices and  
3 submissions shall be considered effective upon receipt, unless  
4 otherwise provided. Written notice as specified herein shall  
5 constitute complete satisfaction of any written notice  
6 requirement of the Consent Decree with respect to the United  
7 States, EPA, the State, and the Settling Defendants,  
8 respectively.

9 As to the United States:

10 Chief, Environmental Enforcement Section  
11 Environment and Natural Resources Division  
12 U.S. Department of Justice  
13 P.O. Box 7611  
14 Ben Franklin Station  
15 Washington, D.C. 20044  
16 Re: DJ # 90-11-2-442

17 and

18 Director, Waste Management Division  
19 United States Environmental Protection Agency  
20 Region IX  
21 75 Hawthorne St.  
22 San Francisco, CA 94105

23 As to EPA:

24 EPA Project Coordinator, San Fernando Valley  
25 Burbank Operable Unit  
26 United States Environmental Protection Agency  
27 Region IX  
28 75 Hawthorne Street, H-6-4  
San Francisco, CA 94105

29 As to the State:

30 Hamid Saebfar, Chief  
31 Site Mitigation Cleanup Operations  
32 Department of Toxic Substances Control  
33 Region 3  
34 1011 N. Grandview Avenue  
35 Glendale, CA 91201

1 As to the Settling Work Defendant:

2 City of Burbank  
3 Peter Frankel, P.E.  
4 Supervising Civil Engineer  
5 City of Burbank  
6 Public Service Department  
7 165 West Magnolia Boulevard  
8 Burbank, CA 91503-0631

9 As to the Settling Defendants Other Than Settling Work Defendant:

10 As set forth in Appendix 7.

11 XXVIII. EFFECTIVE DATE

12 A. The Effective Date of this Consent Decree shall be the  
13 date upon which it is entered by the Court, except as otherwise  
14 provided herein.

15 XXIX. RETENTION OF JURISDICTION

16 A. This Court retains jurisdiction over both the subject  
17 matter of this Consent Decree and the Settling Defendants for the  
18 duration of the performance of the terms and provisions of this  
19 Consent Decree for the purpose of enabling any of the Parties to  
20 apply to the Court at any time for such further order, direction,  
21 and relief as may be necessary or appropriate for the  
22 construction or modification of this Consent Decree, or to  
23 effectuate or enforce compliance with its terms, or to resolve  
24 disputes in accordance with Section XX (Dispute Resolution)  
25 hereof.

26 XXX. APPENDICES

27 A. The following appendices are attached to and  
28 incorporated into this Consent Decree:

Appendix 1 is the complete list of the Settling Cash  
Defendants and Released Parties and/or other Settling Defendants

1 who are related to a Settling Cash Defendant, to Lockheed Martin  
2 or to the City of Burbank in the manner described in Appendix 1.

3  
4 Appendix 2 is the complete list of the Owner Settling  
5 Defendants and the properties they own within the Site.

6  
7 Appendix 3 is the complete list of Settling Defendants  
8 who are excepted from the operation of Section XXII (Covenants  
9 not to Sue by Plaintiffs), Paragraphs A, B and C.

10  
11 Appendix 4 is the Second Stage Statement of Work.

12  
13 Appendix 5 is ESD2.

14  
15 Appendix 6 is a list of the Settling Defendants and for each  
16 Settling Defendant, the person to whom notices and submissions  
17 shall be sent pursuant to Section XXVII (Notices and Submissions)  
18 of this Consent Decree.

19  
20 Appendix 7 is a plot plan or plans which depict extraction  
21 wells VO-1, 2, 3 and 4 as described in Paragraph L of Section XIV  
22 (Funding of Response Activities), and the City's liquid phase GAC  
23 wellfield located at 164 West Magnolia Boulevard, Burbank,  
24 California, as described in Paragraph G of Section V (General  
25 Provisions) and Paragraph H.4 of Section VI (Performance of the  
26 Work).

27 B. The following exhibits are attached to this Consent  
28 Decree for reference purposes and are not incorporated herein

1 unless otherwise noted.

2 Exhibit 1 is the First Consent Decree.

3 "Appendix A" to the First Consent Decree is the ROD  
4 prior to its modification in ESD1, the First Consent Decree, and  
5 ESD2.

6 "Appendix B" to the First Consent Decree is ESD 1.

7 "Appendix C" to the First Consent Decree is the Map of  
8 Corrected Well Locations.

9 "Appendix D" to the First Consent Decree is the SOW.

10 "Appendix E" to the First Consent Decree is Schematics.

11 "Appendix F" to the First Consent Decree is a Plot Map.

12 Exhibit 2 is Unilateral Administrative Order 92-12 and the  
13 April 26, 1992 Amendment to Unilateral Administrative Order 92-  
14 12.

15 Exhibit 3 is a Scope of Work regarding Plant Facilities  
16 Insurance.

17 XXXI. COMMUNITY RELATIONS

18 A. Settling Work Defendant shall participate and cooperate  
19 with to EPA and the State concerning its participation in the  
20 community relations plan ("Plan") for the Site to be developed or  
21 which has been previously developed by EPA. In consultation with  
22 Settling Work Defendant, EPA will determine the appropriate role  
23 for the Settling Work Defendant under the Plan. Settling Work  
24 Defendant shall cooperate with EPA and the State in implementing  
25 the Plan and pursuant thereto, in providing information regarding  
26 the O&M Activities to the public. As requested by EPA, or the  
27 State, Settling Work Defendant, Lockheed Martin, and/or the  
28



1 Settling Cash Defendants (including the UAO Parties) shall  
2 participate in the preparation of information for dissemination  
3 to the public and in public meetings which may be held or  
4 sponsored by EPA or the State to explain activities at or  
5 relating to the Site.

6 **XXXII. MODIFICATION**

7       A. Schedules specified in this Consent Decree, in the  
8 Second Stage Statement of Work, or in any work plan approved by  
9 EPA pursuant to this Consent Decree for completion of the O&M  
10 Activities or any other response activities may be modified by  
11 agreement of EPA and the Settling Work Defendant, and any other  
12 Settling Defendant whose rights and/or obligations would be  
13 substantially affected thereby. All such modifications shall be  
14 made in writing.

15       B. No modifications shall be made to the Second Stage  
16 Statement of Work without written notification to and consent by  
17 any Settling Defendant whose rights or obligations would be  
18 substantially affected thereby, and written approval of the  
19 United States. Prior to providing its approval to any  
20 modification, the United States will provide the State with a  
21 reasonable opportunity to review and comment on the proposed  
22 modification.

23       C. Nothing in this Consent Decree shall be deemed to alter  
24 EPA's authority to make changes to the interim remedy for the  
25 Burbank Operable Unit in compliance with CERCLA, the National  
26 Contingency Plan, and any other applicable laws or regulations,  
27 or to require court approval of such changes.  
28

D. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

A. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States also shall publish notice of the proposed settlement described in this Consent Decree in the Federal Register pursuant to section 122(1) of CERCLA, 42 U.S.C. § 9622(1). The United States hereby gives notice and opportunity to the public for a public meeting in the affected area, and a reasonable opportunity to comment on the proposed settlement prior to its final entry, pursuant to section 6973(d) of RCRA, 42 U.S.C. § 7003(d).

B. The United States reserves the right to withdraw or withhold its consent or suggest modifications to this Consent Decree if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice. However, Settling Defendants' consent to the entry of this Consent Decree is not consent to any modifications, and no Settling Defendant shall be bound by modifications to this Consent Decree without its prior written consent.

C. If for any reason the Court should decline to approve this Consent Decree in the form presented, this Consent Decree is

voidable as to any party at the sole discretion of such party and the terms of this Consent Decree may not be used as evidence in any litigation between the Parties.

XXXIV. SIGNATORIES/SERVICE

A. Each undersigned representative of a Settling Defendant to this Consent Decree, Plaintiffs, and the Assistant Attorneys General for the Environment and Natural Resources Division of the Department of Justice and for the State of California, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

B. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of this Consent Decree.

C. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Concerning any action brought by the United States or the State to enforce the terms of this Consent Decree, Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. Concerning

1 the lodging and entry of this Consent Decree, Settling Defendants  
2 agree to accept in lieu of service by mail or the formal service  
3 requirements set forth in Rule 4 of the Federal Rules of Civil  
4 Procedure, service by the United States and the State by mail of  
5 one (1) copy of any document(s), motions or related matters upon  
6 the following persons:

7 For Lockheed Martin:

8 Gregory McClintock, Esq.  
9 McClintock, Weston, Benshoof  
10 Rochefort, Rubalcava, MacCuish  
11 444 South Flower Street, 43rd floor  
12 Los Angeles, CA 90071

11 For the City of Burbank:

12 Benjamin Kaufman, Esq.  
13 Freilich, Kaufman, Fox & Sohagi  
14 11755 Wilshire Blvd., Suite 1230  
15 Los Angeles, CA 90025-1518

15 For the remaining Settling Defendants:

16 Robert Yahiro, Esq.  
17 Rodi, Pollock, Pettker, Galbraith & Phillips  
18 801 South Grand Avenue, Suite 400  
19 Los Angeles, CA 90017

18 SO ORDERED THIS 22 DAY OF June, 1998

20 Marianne R. Phillips  
21 United States District Judge  
22  
23  
24  
25  
26  
27  
28

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the  
2 matter of United States v. Lockheed Martin Corporation, et al.,  
3 Civ. No. 91-4527-MRP(Tx) relating to the San Fernando Valley  
North Hollywood, Area 1, Burbank Operable Unit Superfund Site.

4  
5 FOR THE UNITED STATES OF AMERICA

6  
7 Date: 11/5/97

L. Schiffer  
Lois Schiffer  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530

10  
11 Date: 4/25/98

W. Weinischke  
William Weinischke  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530

15  
16 Date: \_\_\_\_\_

\_\_\_\_\_  
Monica Miller  
Assistant United States Attorney  
Central District of California  
U.S. Department of Justice  
Federal Building  
300 North Los Angeles Street  
Los Angeles, CA 90012

20  
21 Date: \_\_\_\_\_

\_\_\_\_\_  
Felicia Marcus  
Regional Administrator, Region IX  
U.S. Environmental Protection  
Agency  
75 Hawthorne Street  
San Francisco, CA 94105

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the  
2 matter of United States v. Lockheed Martin Corporation, et al.,  
3 Civ. No. 91-4527-MRP(Tx) relating to the San Fernando Valley  
4 North Hollywood, Area 1, Burbank Operable Unit Superfund Site.

5 FOR THE UNITED STATES OF AMERICA

6 Date: \_\_\_\_\_

7 Lois Schiffer  
8 Assistant Attorney General  
9 Environment and Natural Resources  
10 Division  
U.S. Department of Justice  
Washington, D.C. 20530

11 Date: \_\_\_\_\_

12 William Weinischke  
13 Environmental Enforcement Section  
14 Environment and Natural Resources  
15 Division  
U.S. Department of Justice  
Washington, D.C. 20530

16 Date: \_\_\_\_\_

17 Monica Miller  
18 Assistant United States Attorney  
19 Central District of California  
20 U.S. Department of Justice  
Federal Building  
300 North Los Angeles Street  
Los Angeles, CA 90012

21 Date: 7/24/97

22 Felicia Marcus  
23 Regional Administrator, Region IX  
24 U.S. Environmental Protection  
25 Agency  
26 75 Hawthorne Street  
27 San Francisco, CA 94105  
28

1  
2 Date:

7/24/97

*Marie M. Rongone*

Marie M. Rongone  
Assistant Regional Counsel  
U.S. Environmental Protection  
Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

FOR THE STATE OF CALIFORNIA

3  
4  
5  
6  
7  
8  
9 Date:

Hamid Saebfar  
Chief, Site Mitigation Cleanup  
Operations  
Department of Toxic Substances  
Control  
Southern California Branch

10  
11  
12  
13  
14  
15 Date:

Ann Rushton  
Deputy Attorney General  
State of California

1  
2 Date: \_\_\_\_\_

3 Marie M. Rongone  
4 Assistant Regional Counsel  
5 U.S. Environmental Protection  
6 Agency  
7 Region IX  
8 75 Hawthorne Street  
9 San Francisco, CA 94105

10 FOR THE STATE OF CALIFORNIA

11  
12 Date: 6/24/97

13 H. Saebfar  
14 Hamid Saebfar  
15 Chief, Site Mitigation Cleanup  
16 Operations  
17 Department of Toxic Substances  
18 Control  
19 Southern California Branch

20  
21 Date: June 30, 1997

22 Ann Rushton  
23 Ann Rushton  
24 Deputy Attorney General  
25 State of California

26  
27  
28  
FEB 23 1998  
WILSON CENTER

RECEIVED


151



1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v.  
2 Lockheed Martin, et al., relating to the San Fernando Valley, Area 1 (North Hollywood) Superfund Site,  
3 Burbank Operable Unit.

4  
5 FOR LOCKHEED MARTIN CORPORATION

6  
7 Dated: June 17, 1997.

8   
9 William R. Sorenson  
10 Corporate Vice President  
11 Corporate Environment, Safety & Health  
12 7921 Southpark Plaza  
13 Suite 210  
14 Littleton, Colorado 80120

15 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

16 Name: Dominic J. Hanket  
17 Title: Assistant General Counsel  
18 Address: Lockheed Martin Corporation  
19 2550 North Hollywood Way  
20 Suite 305  
21 Burbank, California 91505  
22 Telephone: (818) 847-0709

1 The UNDERSIGNED PARTY, City of Burbank, California, enters into  
2 this Consent Decree in the matter of United States v. Lockheed  
3 Martin, et al., relating to the San Fernando Valley, Area 1  
4 (North Hollywood) Superfund Site, Burbank Operation Unit.

5  
6  
7  
8 Date:

28 July 97

Bob Kramer

Bob Kramer  
Mayor of the City of Burbank

9  
10 Attest:

11  
12 Judie Sarquiz  
13 Judie Sarquiz, City Clerk

14 Agent authorized to accept service on behalf of above-signed  
15 party:

16 Carolyn A. Barnes  
17 Sr. Assistant City Attorney  
275 East Olive Avenue  
Burbank, California 91510-6459

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: September 23, 1996

WEBER AIRCRAFT, INC.

By: 

Name: Michel LaBarre

Title: President

Address: 1300 E. Valencia Drive

Fullerton, CA 92631

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Rod Hoover

15 Title: Director, Human Resources

16 Address: 1300 E. Valencia Drive

Fullerton, CA 92631

18 Telephone: (714) 449-3050

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: September 20, 1996

By: William H. Fisch

8 Name: AccraTronics Seals Corporation

9 Title: President

10 Address: 2211 Kenmere Avenue

11 Burbank, California 91504

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Todd O. Maiden

15 Title: Legal Counsel

16 Address: Baker & McKenzie

17 130 East Randolph Drive, Suite 3500

18 Chicago, Illinois 60601

19 Telephone: (312) 861-2990

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: September 9-20-96 1996

By: William H. Fisch

8 Name: William H. Fisch Trust (10/29/93)

9 Title: Trustee

10 Address: 2211 Kenmore Avenue

11 Burbank, California 91504

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Todd O. Maiden

15 Title: Legal Counsel

16 Address: Baker & McKenzie

17 130 East Randolph Drive, Suite 3500

18 Chicago, Illinois 60601

19 Telephone: (312) 861-2990  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matt  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5

6

7

Dated: September 23, 1996

By: 

Delbert E. Jones

8

Name: Jones Family Trust (05/14/93)

9

Title: Trustee

10

Address: 2211 Kenmere Avenue

11

Burbank, California 91504

12

Agent authorized to accept service on behalf of above-signed

13

party:

14

Name: Todd O. Maiden

15

Title: Legal Counsel

16

Address: Baker & McKenzie

17

130 East Randolph Drive, Suite 3500

18

Chicago, Illinois 60601

19

Telephone: (312) 861-2990

20

21

22

23

24

25

26

27

28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: September 14, 1996 By: Adler Screw Products, Inc.,  
a California corporation

8 Name: Eirik Lirhus

9 Title: President

10 Address: 480 Enterprise Street

11 San Marcos, CA 92069

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Charles H. Pomeroy

McKenna & Cuneo, L.L.P.

15 Title: Attorneys for the above party

16 Address: 444 S. Flower St., 7th Flr.

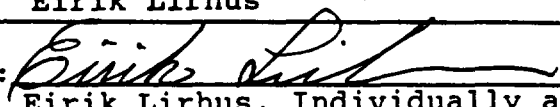
17 Los Angeles, CA 90071

18 Telephone: (213) 243-6256

19 (213) 688-1000

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: September 16, 1996 By: Eirik Lirhus

8 Name:   
9 Eirik Lirhus, Individually and  
10 Title: as Trustee for the Lirhus Family  
11 Trust

Address: 3047 N. California Street

Burbank, CA 91504

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Charles H. Pomeroy  
15 McKenna & Cuneo, L.L.P.

Title: Attorneys for the above party

16 Address: 444 S. Flower St., 7th Flr.

Los Angeles, CA 90071

18 Telephone: (213) 243-6256

(213) 688-1000



1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: September 16, 1996 By: Bergjlot Lirhus

8 Name: Bergjlot Lirhus  
9 Bergjlot Lirhus  
10 Title: Individually and as Trustee for  
11 the Lirhus Family Trust  
12 Address: 3047 N. California Street  
13 Burbank, CA 91504

14 Agent authorized to accept service on behalf of above-signed  
15 party:

16 Name: Charles H. Pomeroy  
17 McKenna & Cuneo, L.L.P.  
18 Title: Attorneys for the above party  
19 Address: 444 S. Flower St., 7th Flr.  
20 Los Angeles, CA 90071  
21 Telephone: (213) 243-6256  
22 (213) 688-1000

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matte  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: September 16, 1996 By: Lirhus Family Trust

8 Name: Eirik Lirhus

9 Title: Trustee

10 Address: 3047 N. California Street

11 Burbank, CA 91504

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Charles H. Pomeroy

15 McKenna & Cuneo, L.L.P.

16 Title: Attorneys for the above parties

17 Address: 444 S. Flower St., 7th Flr.

18 Los Angeles, CA 90071

19 Telephone: (213) 243-6256

20 (213) 688-1000

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: September 16, 1996 By: Lirhus Family Trust

8 Name: Bergjot Lirhus  
9 Bergjot Lirhus  
10 Title: Trustee

11 Address: 3047 N. California Street  
Burbank, CA 91504

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Charles H. Pomeroy  
15 McKenna & Cuneo, L.L.P.  
16 Title: Attorneys for the above parties

17 Address: 444 S. Flower St., 7th Flr.  
Los Angeles, CA 90071

18 Telephone: (213) 243-6256  
19 (213) 688-1000  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5 AEROQUIP CORPORATION,  
6 a Michigan Corporation

7 Dated: September 23, 1996

By: 

8 Name: Howard M. Selland

9 Title: President

10 Address: 3000 Strayer Rd.; P.O. Box 50

11 Maumee; Ohio 43537-0050

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Madonna F. McGrath

15 Title: Senior Attorney - Environmental


16 Address: 3000 Strayer Rd.; P.O. Box 50

17 Maumee, Ohio 43536-0050

18 Telephone: (419) 867-2334

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5 TRINOVA CORPORATION,  
6 an Ohio Corporation

7 Dated: September 23, 1996 By: 

8 Name: James E. Kline

9 Title: Vice President and General Counsel

10 Address: 3000 Strayer Rd.; P.O. Box 50

11 Maumee, Ohio 43537-0050

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Madonna F. McGrath

15 Title: Senior Attorney - Environmental

16 Address: 3000 Strayer Rd.; P.O. Box 50

17 Maumee, Ohio 43537-0050

18 Telephone: (419) 867-2334

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6 A-H Plating, Inc., a California corporation

7 Dated: September 20, 1996

By: John P. Waschak

8 Name: John P. Waschak

9 Title: Vice President

10 Address: 28079 Ave. Stanford

11 Valencia, CA 91355

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Clare Bronowski

Christensen, White, Miller, Fink,

15 Title: Jacobs, Glaser & Shapiro, LLP

16 Address: 2121 Avenue of the Stars, #1800

17 Los Angeles, CA 90067

18 Telephone: (310) 282-6254

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6 The Waschak Family Trust, a trust

7 Dated: September 20, 1996

By: John P. Waschak

8 Name: John P. Waschak

9 Title: Trustee

10 Address: 28079 Ave. Stanford

11 Valencia, CA 91355

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Clare Bronowski

15 Christensen, White, Miller, Fink,  
16 Title: Jacobs, Glaser & Shapiro, LLP

17 Address: 2121 Avenue of the Stars, #1800

18 Los Angeles, CA 90067

19 Telephone: (310) 282-6254  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5 John P. Waschak, as trustee of  
6 The Waschak Family Trust

7 Dated: September 20, 1996

By: John P. Waschak

8 Name: John P. Waschak

9 Title: Trustee

10 Address: 28079 Ave. Stanford

11 Valencia, CA 91355

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Clare Bronowski

15 Christensen, White, Miller, Fink,  
16 Title: Jacobs, Glaser & Shapiro, LLP

17 Address: 2121 Avenue of the Stars, #1800

18 Los Angeles, CA 90067

19 Telephone: (310 ) 282-6254  
20  
21  
22  
23  
24  
25  
26  
27  
28



1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6 Melba R. Waschak, as trustee of  
The Waschak Family Trust

7 Dated: September 20, 1996 By: Melba R. Waschak

8 Name: Melba R. Waschak

9 Title: Trustee

10 Address: 28079 Ave. Stanford

11 Valencia, CA 91355

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Clare Bronowski

15 Christensen, White, Miller, Fink,  
16 Title: Jacobs, Glaser & Shapiro, LLP

17 Address: 2121 Avenue of the Stars, #1800

18 Los Angeles, CA 90067

19 Telephone: (310) 282-6254

20

21

22

23

24

25

26

27

28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5 AVIALL SERVICES, INC. .

6  
7 Dated: September 20, 1996

By: 

8 Name: Jeffrey J. Murphy

9 Title: Senior Vice President

10 Address: Aviall Services, Inc.

11 2055 Diplomat Drive, Dallas, Texas 75234

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: CT Corporation System

15 Title: \_\_\_\_\_

16 Address: Los Angeles, California 90017

17 818 W. 7th Street, 2nd Floor

18 Telephone: (213) 627-8252

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6 AVICA, INC.

7 Dated: September 19, 1996

By:

8 Name:

9 Title:

10 Address:

Robert W. Soukup  
Robert W. Soukup  
Director/Treasurer  
Meggitt-USA, INC.  
540 N. Commercial ST Manchester, NH

11  
12 Agent authorized to accept service on behalf of above-signed  
13 party:

03/01  
McCutchen, Doyle, Brown &  
Enersen LLP

14 Name:

15 Title:

16 Address:

17 Suite 4400, Los Angeles, CA 90071

18 Telephone: (213) 680-6400  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matte  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5 McENTEE FAMILY PARTNERSHIP

6  
7 Dated: September 25, 1996

By: 

8 Name: James N. McEntee

9 Title: Partner

10 Address: 10739 Forest Street

11 Santa Fe Springs, CA 90670

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Robert G. McEntee

15 Title: Limited Partner

16 Address: 700 Barris Drive

17 Fullerton, CA 92832

18 Telephone: (714) 449 1286

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the  
2 matter of United States v. Lockheed Martin, et al., relating to  
3 the San Fernando Valley, Area 1 (North Hollywood) Superfund Site,  
4 Burbank Operable Unit.

5  
6 Dated: September 17, 1996

By: B. J. Grinding, Inc.

7 Name: Robert J. Hoiseth  
8 Robert J. Hoiseth

9 Title: President

10 Address: 2632 North Ontario Street  
11 Burbank, CA 91504

12 ROBERT J. HOISETH, an  
13 individual

GLENDIA I. HOISETH, an  
individual

14 By Robert J. Hoiseth  
15

By Glenda I. Hoiseth

16 HOISETH FAMILY TRUST

17  
18 By Glenda I. Hoiseth  
19 Glenda I. Hoiseth  
20 Trustee

21 Agent authorized to accept service on behalf of above-  
22 signed party:

23 Name: Robert J. Hoiseth

24 Title: President

25 Address: 2632 North Ontario Street  
26 Burbank, CA 91504

27 Telephone: (213) 849-2727  
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United  
2 States v. Lockheed Martin, et al., relating to the San Fernando Valley, Area 1 (North  
3 Hollywood) Superfund Site, Burbank Operable Unit.

4  
5 Dated: September 20<sup>th</sup>, 1996

6  
7 By: Joseph F. Bangs, DBA Bangs Manufacturing Company,  
8 a sole proprietorship

9 Name: Joseph F. Bangs, by Doris B. Bangs, under power  
10 of attorney

11 Signature:

*Doris B. Bangs*

12 Title:

Owner

13 Address:

1601 West Burbank Boulevard

14 Burbank, CA 91506

15  
16 Agent authorized to accept service on behalf of above-signed party:

17  
18 Name: Monte Anderson

19 Title:

Foreman

20 Address:

1601 West Burbank Boulevard

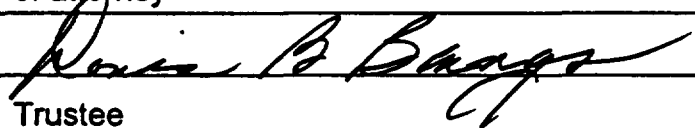
21 Burbank, CA 91506

22 Telephone:

(818) 845-3528

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United  
2 States v. Lockheed Martin, et al., relating to the San Fernando Valley, Area 1 (North  
3 Hollywood) Superfund Site, Burbank Operable Unit.

4  
5 Dated: September 20, 1996

6  
7 By: Bangs Trust, dated October 3, 1990, a trust  
8 Name: Joseph F. Bangs, by Doris B. Bangs, under power  
9 of attorney  
10 Signature:   
11 Title: Trustee  
12 Address: 1601 West Burbank Boulevard  
13 Burbank, CA 91506  
14

15 Agent authorized to accept service on behalf of above-signed party:

16  
17 Name: Monte Anderson  
18 Title: Foreman  
19 Address: 1601 West Burbank Boulevard  
20 Burbank, CA 91506  
21 Telephone: (818) 845-3528  
22  
23  
24  
25  
26  
27  
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United  
2 States v. Lockheed Martin, et al., relating to the San Fernando Valley, Area 1 (North  
3 Hollywood) Superfund Site, Burbank Operable Unit.

4  
5 Dated: September 20, 1996

6  
7 By: Bangs Trust, dated October 3, 1990, a trust

8 Name: Doris B. Bangs

9 Signature: 

10 Title: Trustee

11 Address: 1601 West Burbank Boulevard

12 Burbank, CA 91506

13  
14 Agent authorized to accept service on behalf of above-signed party:

15  
16 Name: Monte Anderson

17 Title: Foreman

18 Address: 1601 West Burbank Boulevard

19 Burbank, CA 91506

20 Telephone: (818) 845-3528



1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5 Mel Bernie & Company, Inc., a California  
6 corporation, d/b/a Accessory Plating and  
7 1928 Jewelry Ltd.

8 Dated: September 17, 1996

By: 

9 Name: Edward K. Thomas

10 Title: Senior Vice President

11 Address: 1928 Jewelry Ltd.

12 3000 Empire Avenue  
13 Burbank, CA 91505

14 Agent authorized to accept service on behalf of above-signed party:

15 Name: Edward K. Thomas

16 Title: Senior Vice President

17 Address: 1928 Jewelry Ltd.

18 3000 Empire Avenue  
19 Burbank, CA 91505

20 Telephone: (818) 841-1928  
21  
22  
23  
24  
25  
26  
27  
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5 The Bernie Trust

6 Dated: September 18, 1996

7 By: Melvyn J. Bernie

8 Name: Melvyn J. Bernie

9 Title: c/o 1928 Jewelry Ltd.

10 Address: Attn: Edward K. Thomas  
3000 Empire Avenue  
Burbank, A 91505

11  
12  
13 Agent authorized to accept service on behalf of above-signed party:

14 Name: Edward K. Thomas

15 Title: Senior Vice President

16 Address: 1928 Jewelry Ltd.  
3000 Empire Avenue  
Burbank, CA 91505

17  
18 Telephone: (818) 841-1928

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5 Laurie S. Bernie, as trustee of  
6 the Bernie Trust

7 Dated: September 18, 1996

By: Laurie S. Bernie

8 Name: Laurie S. Bernie

9 Title: \_\_\_\_\_

10 c/o 1928 Jewelry Ltd.

Address: Attn: Edward K. Thomas

11 3000 Empire Avenue

Burbank, CA 91505

12  
13 Agent authorized to accept service on behalf of above-signed party:

14 Name: Edward K. Thomas

15 Title: Senior Vice President

16 Address: 1928 Jewelry Ltd.

17 3000 Empire Avenue

18 Burbank, CA 91505

19 Telephone: (818) 841-1928

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5 Melvyn J. Bernie, as trustee of  
6 the Bernie Trust

7 Dated: September 18, 1996

By: Melvyn J. Bernie

8 Name: Melvyn J. Bernie

9 Title: c/o 1928 Jewelry Ltd.

10 Address: Attn: Edward K. Thomas  
11 3000 Empire Avenue  
Burbank, CA 91505

12  
13 Agent authorized to accept service on behalf of above-signed party:

14 Name: Edward K. Thomas

15 Title: Senior Vice President

16 Address: 1928 Jewelry Ltd.

17 3000 Empire Avenue  
18 Burbank, CA 91505

19 Telephone: (818) 841-1928

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5 Laurie S. Bernie, an individual

6 Dated: September 18, 1996

7 By: Laurie S. Bernie

8 Name: Laurie S. Bernie

9 Title: c/o 1928 Jewelry Ltd.

10 Address: Attn: Edward K. Thomas  
11 3000 Empire Avenue  
12 Burbank, CA 91505

13 Agent authorized to accept service on behalf of above-signed party:

14 Name: Edward K. Thomas

15 Title: Senior Vice President

16 Address: 1928 Jewelry Ltd.

17 3000 Empire Avenue

18 Burbank, CA 91505

19 Telephone: (818) 841-1928  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5 Melvyn J. Bernie, an individual

6 Dated: September 18, 1996

7 By: Melvyn J. Bernie

8 Name: Melvyn J. Bernie

9 Title: c/o 1928 Jewelry Ltd.

10 Address: Attn: Edward K. Thomas  
11 3000 Empire Avenue  
12 Burbank, CA 91505

13 Agent authorized to accept service on behalf of above-signed party:

14 Name: Edward K. Thomas

15 Title: Senior Vice President

16 Address: 1928 Jewelry Ltd.

17 3000 Empire Avenue  
18 Burbank, CA 91505

19 Telephone: (818) 841-1928  
20  
21  
22  
23  
24  
25  
26  
27  
28

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Lockheed Martin, et al., related to the San Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank Operable Unit.

Dated: September 16, 1996

Settling Party: Burmar Metal  
Finishing Corp., dba Barron Anodizing  
& Paint

By: Burt Greenberg

Name: Burt Greenberg

Title: President

Address: 23911 Berdon Street  
Woodland Hills, CA 91367

Agent authorized to accept service on behalf of above-  
signed party:

Name: Randall J. Krause

Title: Attorney

Address: BAKER, MANOCK & JENSEN  
5260 N. Palm Avenue, Suite 421  
Fresno, CA 93704

Telephone: (209) 432-5400

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matt  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6 CRANE CO.

7 Dated: September 26, 1996

By: Augustus I. duPont

8 Name: Augustus I. duPont

9 Title: Vice President, Secretary

10 Address: 100 First Stamford Place

11 Stamford, CT 06902

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: W. Tolliver Besson, Esq.

15 Title: \_\_\_\_\_

16 Address: Paul, Hastings, Janofsky & Walker  
17 1299 Ocean Avenue, Santa Monica, CA 90401

18 Telephone: (310) 319-3228



1 THE UNDERSIGNED PARTY enters into this Consent Decree in the  
2 matter of United States v. Lockheed Martin, et al., relating to  
3 the San Fernando Valley, Area 1 (North Hollywood) Superfund Site,  
4 Burbank Operable Unit.

5  
6 Dated: September 17, 1996

By: Deltron Engineering, Inc.

7 Name: Tony Kuebler

8 Tony Kuebler

9 Title: Vice-President

10 Address: 2800 San Fernando Boulevard

11 Burbank, CA 91504

12 TONY KUEBLER, an individual

MICHAEL FILIJAN, an individual

13  
14 By Tony Kuebler

15 By Michael Filijan

16 FILIJAN AND KUEBLER PROPERTIES, a partnership

17  
18 By Tony Kuebler

19 Tony Kuebler, Partner

20  
21 Agent authorized to accept service on behalf of above-  
22 signed party:

23 Name: Tony Kuebler

24 Title: Vice-President

25 Address: 2800 San Fernando Boulevard

26 Burbank, CA 91504

27 Telephone: (213) 849-2727

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: September 24, 1996

By: Henry Acuff

HENRY ACUFF

Name: HYDRA-ELECTRIC COMPANY

Title: PRESIDENT

Address: 3151 KENWOOD STREET

BURBANK CA 91505-1052

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Loeb & Loeb, LLP

15 Title: \_\_\_\_\_

16 Address: 1000 Wilshire Blvd, #1800

17 Los Angeles, California 90017

18 Telephone: (213) 688-3400  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: October 11,  
September       , 1996 By: *[Signature]*  
8 Name: Davis Industries  
9 Title: Secretary-Treasurer  
10 Address: P.O. Box 4495  
11 Chatsworth, CA 91313-4495

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Loeb, Loeb  
15 Title: Malissa Hathaway McKeith, Esq.  
16 Address: 1000 Wilshire Blvd., #1810  
17 Los Angeles, Calif. 90017  
18 Telephone: (213) 688-3400  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matt  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5 JANCO CORPORATION

6  
7 Dated: September 20, 1996

By: Richard M. Barrett  
RICHARD BARRETT

8 Name: \_\_\_\_\_

9 Title: President

10 Address: JANCO CORPORATION  
11 3111 Winona Avenue  
Burbank, California 91508-0038

12 Agent authorized to accept service on behalf of above-signed  
13 party:

PIRCHER, NICHOLS & MEEKS

14 By : David E. Cranston  
15 DAVID E. CRANSTON

16 Title: Attorneys for Janco Corporation

17 Address: 1999 Avenue of the Stars, 26th Fl.  
Los Angeles, CA 90067

18 Telephone: (310 ) 201-8900  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5 BKT ENTERPRISES, INC.

6  
7 Dated: September 18, 1996

By:

Kay Giove-Skeeters  
KAY GIOVE-SKEETERS

8 Name:

KAY-GIOVE-SKEETERS

9 Title:

PRES.

10 Address:

P.O. Box 225

OTAI, CA 93024

11  
12 Agent authorized to accept service on behalf of above-signed  
13 party:

PIRCHER, NICHOLS & MEEKS

14 By :

DAVID E. CRANSTON

15 Title: Attorneys for BKT Enterprises, Inc.

16 Address: 1999 Avenue of the Stars, 26th Fl.

Los Angeles, CA 90067

17  
18 Telephone: (310) 201-8900

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5 JOSLYN SUNBANK CORPORATION f/k/a SUNBANK  
6 ELECTRONICS, INC.

7 Dated: September 17, 1996

By: Carl S. Grabinski

8 Name: Carl S. Grabinski

9 Title: Assistant Secretary & Associate Genl. Coun.

10 Address: 1740 Commerce Way

11 Paso Robles, CA 93446

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Thomas A. Coz

15 Title: Attorney at Law

16 Address: P.O. Box 5013

17 Cincinnati, OH 45205-0013

18 Telephone: (513) 244-6648

19 Facsimile: (513) 244-6638

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

6 JOSLYN CORPORATION

7 Dated: September 17, 1996 By: Carl S. Grabinski

8 Name: Carl S. Grabinski

9 Title: President

10 Address: 9200 West Fullerton

11 Franklin Park, IL 60131

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Thomas A. Coz

15 Title: Attorney at Law

16 Address: P.O. Box 5013

17 Cincinnati, OH 45205-0013

18 Telephone: (513) 244-6648

19 Facsimile: (513) 244-6638

20

21

22

23

24

25

26

27

28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matte  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

OCEAN TECHNOLOGY, INC.

5  
6  
7 Dated: September 24, 1996 By: HG

8 Name: Harry Bruns

9 Title: Secretary

10 Address: One Allied Drive  
11 Little Rock, AR 72203

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: (see above)

15 Title: \_\_\_\_\_

16 Address: \_\_\_\_\_

17  
18 Telephone: ( ) \_\_\_\_\_



1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: September 10/3/96, 1996

By: 

8 Name: Richard A. McWhirter

9 Title: Executive Vice President  
and Corporate Secretary

10 Address: Textron Inc.

11 40 Westminster Street  
Providence, RI 02903

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Jamieson M. Schiff

15 Title: Environmental Counsel

16 Address: Textron Inc.

17 40 Westminster Street  
Providence, RI 02903

18 Telephone: (401) 457-2422  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: September 30, 1996

By: 

8 Name: John W. Hedges

9 Title: Vice President, Legal

10 Address: 25200 West Rye Canyon Road

11 Valencia, CA 91355

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Michael Hickok

15 Title: Attorney

16 Address: 2121 Avenue of the Stars

17 Suite 1700

18 Telephone: (310) 277-5082

19 Los Angeles, CA. 90067

1 THE UNDERSIGNED PARTY named 'TEXTRON INC. enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin et al., relating to the San Fernando Valley, Area 1 (North  
3 Hollywood) Superfund Site, Burbank Operable Unit solely in the capacity of an "Affiliated Party" based  
4 on its relationship with Ocean Technology, Inc.

5  
6  
7 Dated: September \_\_, 1996

8 9/19/96  
9 OK [Signature]

By: [Signature]

Name: Richard A. McWhirter

Title: Executive Vice President and  
Corporate Secretary

Address: 40 Westminster Street

Providence, RI 02903

12  
13 Agent authorized to accept service on behalf of the above-signed party:

14 Name: Jamieson M. Schiff

15 Title: Environmental Counsel

16 Address: 40 Westminster Street

17 Providence, RI 02903

18 Telephone: (401) 457-2422

1 THE UNDERSIGNED PARTY named HR TEXTRON INC. enters into this Consent Decree in the  
2 matter of United States v. Lockheed Martin, et al., relating to the San Fernando Valley, Area 1 (North  
3 Hollywood) Superfund Site, Burbank Operable Unit solely in the capacity of an "Affiliated Party" based  
4 on its relationship with Ocean Technology, Inc.

5  
6  
7 Dated: September 25, 1996

By: 

8 Name: John W. Hedges

9 Title: Vice President

10 Address: 25200 West Rye Canyon Road

11 Valencia, CA 91355

12  
13 Agent authorized to accept service on behalf of the above-signed party:

14 Name: Michael Hickok

15 Title: Attorney

16 Address: 2121 Avenue of the Stars Ste 1700

17 Los Angeles, CA 90067

18 Telephone: (310) 277-5082

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the  
2 matter of United States v. Lockheed Martin, et al., related to  
3 the San Fernando Valley, Area 1 (North Hollywood) Superfund  
4 Site, Burbank Operable Unit.

5  
6 Dated: September 16, 1996

7 Settling Party: Pacific Partnership

8 By: ~~\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_~~

9 Name: Martin May

10 Title: Managing Partner

11 Address: 9363 Wilshire Blvd.  
12 Beverly Hills, CA 90210

13 Agent authorized to accept service on behalf of above-  
14 signed party:

15 Name: Randall J. Krause

16 Title: Attorney

17 Address: BAKER, MANOCK & JENSEN  
18 5260 N. Palm Avenue, Suite 421  
19 Fresno, CA 93704

20 Telephone: (209) 432-5400  
21  
22  
23  
24  
25  
26  
27  
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6 Sargent Industries, Inc.

7 Dated: September 19, 1996

By: John R. Ditterline

8 Name: JOHN R. DITTERLINE

9 Title: SECRETARY

10 Address: 2607 N Grandview Blvd

11 Waukesha, WI 53188

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: John R. Ditterline

15 Title: Secretary

16 Address: 2607 N Grandview Blvd

17 Waukesha, WI 53188

18 Telephone: (414) 548-6060

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Lockheed Martin, et al., relating to the San Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank Operable Unit.

ANTONINI FAMILY TRUST

Dated: September 24, 1996

By: 

Name: Mario Antonini

Title: Trustee

Address: 11374 Tuxford Street

Sun Valley, CA 91352

Agent authorized to accept service on behalf of above-signed party:

Name: Mario Antonini

Title: Trustee

Address: 11374 Tuxford Street

Sun Valley, CA 91352

Telephone: (818) 767-8576

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 DATED: September 23, 1996

By: 

Name: GARY ROBERTS

Title: SVP

Address: 12780 SAN FERNANDO  
SYLMAR CA 91342

12  
13 Agent authorized to accept service on behalf of above-signed  
14 party:

Name: David F. Wood, Esq.

Title: Attorney for Defendant  
SIERRACIN CORPORATION

Address: 624 S. Grand Ave. 19th  
Floor  
Los Angeles, CA 90017

Telephone: (213) 688-0080

LAW OFFICES  
ANDERSON, McPHARLIN & CONNERS LLP  
ONE WALSHIRE BUILDING  
NINETEENTH FLOOR  
624 SOUTH GRAND AVENUE  
LOS ANGELES, CALIFORNIA 90017-3320  
TELEPHONE 688-0080 • FACSIMILE 622-7594



1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 DATED: September 20, 1996

By: 

Name: BRADLEY D. HOWARD

Vice

Title: PRESIDENT

Address: 1819 W. OLIVE AVE.

BURBANK, CA 91506

12  
13 Agent authorized to accept service on behalf of above-signed  
14 party:

Name: Bradley D. Howard

Vice President, Industrial

Title: Bowling Corp.

Address: 1819 E. Olive Street

Burbank, CA 91506

Telephone: (818) 843-7850

LAW OFFICES  
ANDERSON, M-PHARLIN & CONNERS LLP  
LSHIRE BUILDING  
SEVENTH FLOOR  
624 SOUTH GRAND AVENUE  
LOS ANGELES, CALIFORNIA 90017-3320  
TELEPHONE 888-0080 • FACSIMILE 822-7584

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5 R & G SLOANE MANUFACTURING CO., INC.

6  
7 Dated: October ~~September~~ 11, 1996

By: B.P. Smith

8 Name: B. P. SMITH

9 Title: PRESIDENT

10 Address: 7777 SLOANE DR

11 LITTLE ROCK, AR 72206

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Loeb, Loeb

15 Title: \_\_\_\_\_

16 Address: Douglas Blvd, #810

17 Los Angeles, Calif. 90017

18 Telephone: (213) 688-3400

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: September 23, 1996

8 For: "Space-Lock Inc. a  
9 California Corporation  
10 Leeco Division"

By: Jeffrey W. Wase

Name: JEFFREY W. WASE

Title: VICE-PRESIDENT

Address: 7526 N. Ontario St.

Burbank, Ca 91504

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: JEFFREY W. WASE

15 Title: VICE-PRESIDENT

16 Address: 7526 N. Ontario St.

Burbank Ca 91504

18 Telephone: (213) 849-6751

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5 ESTATE OF ALBINA BREBBIA

6  
7 Dated: September 27, 1996

By: Christina Cogar

8 Name: CHRISTINA COGAR

9 Title: Executive

10 Address: 4209 VERDUGO RD  
11 LOS ANGELES, CA 90065

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Loeb: Loeb

15 Title: \_\_\_\_\_

16 Address: 1000 Wilshire Blvd #1800  
17 Los Angeles California 90017

18 Telephone: (213) 688-3400

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5 STAINLESS STEEL PRODUCTS, INC.

6  
7 Dated: September 21, 1996

By: 

8 Name: William R. Zimmerman

9 Title: Chairman

10 Address: c/o Zimmerman Holdings, Inc.

11 2600 Mission Street, Suite 100

12 San Marino, CA 91108 1676

13 Agent authorized to accept service on behalf of above-signed  
14 party:

15 Name: Robert A. Yahiro, Esq.

16 Rodi, Pollock, Pettker et al.

17 Title: Attorney

18 Address: 801 South Grand Avenue

19 Los Angeles, CA 90017

20 Telephone: (213) 895-4900  
21  
22  
23  
24  
25  
26  
27  
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matte  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5 ZIMMERMAN HOLDINGS, INC.

6  
7 Dated: September 24, 1996

By: 

8 Name: William R. Zimmerman

9 Title: President

10 Address: 2600 Mission Street, Ste 100

11 San Marino, CA 91108-1676

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Robert A. Yahiro, Esq.

15 Rodi, Pollock, Peltker et al.

16 Title: Attorney


17 Address: 801 South Grand Avenue

18 Los Angeles, CA 90017

19 Telephone: (213) 895-4900

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5 THE UHLMANN OFFICES, INC./  
6 SUNHILL PARTNERS

7 Dated: September 25<sup>th</sup>, 1996 By:   
8 Name: John M. Healy  
9 Title: ~~Vice President Asset Management~~  
10 Address: 13245 Riverside Dr., Ste. 500  
11 Sherman Oaks, CA 91423

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Barry C. Groveman  
15 Title: Attorney  
16 Proskauer Rose Goetz & Mendelsohn  
17 Address: 2121 Avenue of the Stars  
Suite 2700  
Los Angeles, CA 90067  
18 Telephone: (310)-284-5667  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: September 26, 1996

By: Terry S. Knezevich

8 Name: STEVE'S PLATING CORPORATION,  
UNIFACTOR Corp.

9 Title: Terry S. Knezevich, President

10 Address: 3111 N. San Fernando Blvd.

11 Burbank, CA 91504

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Timothy V. P. Gallagher, Esq.

15 Title: Attorney

16 Address: 3915 Stone Canyon Avenue

17 Sherman Oaks, CA 91403

18 Telephone: (818) 981-3206



1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: September 26, 1996

By: Terry S. Knezevich

8 Name: TERRY S. KNEZEVICH

9 Title: INDIVIDUAL

10 Address: 3111 N. San Fernando Blvd.

11 Burbank, CA 91504

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Timothy V. P. Gallagher, Esq.

15 Title: Attorney

16 Address: 3915 Stone Canyon Avenue

17 Sherman Oaks, CA 91403

18 Telephone: (818) 981-3206  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: September 18, 1996

By: Walton R. Emmick

8 Name: Walton R. Emmick

9 Title: \_\_\_\_\_

10 Address: 4245 Clybourn Avenue

11 North Hollywood, CA 91602

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: (See Above)

15 Title: \_\_\_\_\_

16 Address: \_\_\_\_\_

17 \_\_\_\_\_  
18 Telephone: ( )

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: September 14, 1996

By: Julie Spelman

8 Name: Clelta Spelman

9 Title: \_\_\_\_\_

10 Address: 517 Maywood Avenue

11 San Bernardino, CA 92404

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: (See Above)

15 Title: \_\_\_\_\_

16 Address: \_\_\_\_\_

17 \_\_\_\_\_  
18 Telephone: ( ) \_\_\_\_\_  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matt.  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: September 9-25-96 1996

By: Diane R. Baker

8 Name: DIANE R BAKER

9 Title: Individual

10 Address: 4312 Woodleigh Lane

11 La Canada, CA 91011

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Wilbur Gin

15 Title: Attorney

16 Address: C/O Edwards, Edwards & Ashton

17 420 N. Brand Blvd., Suite 500

18 Glendale, California 91203

19 Telephone: (818) 247-7380  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: September 30, 1996

By: *Elaine S. Barr*

8 Name: Elaine S. Barr

Individually and as trustee of the Homer R.

9 Title: Barr and Elaine S. Barr Family Trust

10 Address: 45 Yorkshire Drive

11 Hilton Head Island, South Carolina 29928

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: The O'Toole Law Firm

15 Title: Patricia M. O'Toole, Esq.

16 Address: 601 S. Figueroa Street, Suite 4100

17 Los Angeles, CA 90017

18 Telephone: (213) 630-4200

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: September 30, 1996 By: Elaine S. Barr Trustee

8 Name: The Homer R. Barr and Elaine S. Barr  
Family Trust

9 Title: Elaine S. Barr, Trustee

10 Address: 45 Yorkshire Drive

11 Hilton Head Island, South Carolina 29928

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: The O'Toole Law Firm

15 Title: Patricia M. O'Toole, Esq.

16 Address: 601 S. Figueroa Street, Suite 4100

17 Los Angeles, CA 90017

18 Telephone: (213) 630-4200

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: September 23, 1996

By: James E. Hunt

8 Name: JAMES E. HUNT

9 Title: President, L.A. Gauge Co., Inc.

10 Address: 7440 San Fernando Road

11 Sun Valley, CA 91352

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Robert L. Hines

15 Title: Landels Ripley & Diamond, LLP

16 Address: 350 The Embarcadero

17 San Francisco, CA 94105-1250

18 Telephone: 415 512-8700

19 Fax: (415) 512-8750

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the  
2 matter of United States v. Lockheed Martin, et al., relating to  
3 the San Fernando Valley, Area 1 (North Hollywood) Superfund site,  
4 Burbank Operable Unit.

5  
6 Dated:

For TWISS HEAT TREATING CO., INC.  
dba TWISS HEAT TREATING CO.

7  
8 By x 

9 Name: WILLIAM E. TWISS

10 Title: President

11 Address: 2503 N. Ontario Street

12 Burbank, CA 91504

13 Agent authorized to accept service on behalf of above-  
14 signed party:

15 Name: WILLIAM E. TWISS

16 Title: President

17 Address: 2503 N. Ontario Street

18 Burbank, CA 91504  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



1 THE UNDERSIGNED PARTY enters into this Consent Decree in the  
2 matter of United States v. Lockheed Martin, et al., relating to  
3 the San Fernando Valley, Area 1 (North Hollywood) Superfund site,  
4 Burbank Operable Unit.

5 Dated:

For the WILLIAM E. and EVELYN TWISS  
FAMILY TRUST

6 By: x 

7 Name: WILLIAM E. TWISS

8 Title: President

9 Address: 2503 N. Ontario Street

10 Burbank, CA 91504

11  
12 Agent authorized to accept service on behalf of above-  
13 signed party:

14 Name: WILLIAM E. TWISS

15 Title: President

16 Address: 2503 N. Ontario Street

17 Burbank, CA 91504

18

19

20

21

22

23

24

25

26

27

28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the  
2 matter of United States v. Lockheed Martin, et al., relating to  
3 the San Fernando Valley, Area 1 (North Hollywood) Superfund site,  
4 Burbank Operable Unit.

5 Dated:

For WILLIAM E. TWISS

6

By: 

7

Name: WILLIAM E. TWISS

8

Title: N/A

9

Address: 2503 N. Ontario Street

10

Burbank, CA 91504

11

12 Agent authorized to accept service on behalf of above-  
13 signed party:

13

Name: WILLIAM E. TWISS

14

Title: President

15

Address: 2503 N. Ontario Street

16

Burbank, CA 91504

17

18

19

20

21

22

23

24

25

26

27

28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the  
2 matter of United States v. Lockheed Martin, et al., relating to  
3 the San Fernando Valley, Area 1 (North Hollywood) Superfund site,  
4 Burbank Operable Unit.

5 Dated:

For EVELYN TWISS

6

By Evelyn Twiss

7

Name: EVELYN TWISS

8

Title: N/A

9

10

Address: 2503 N. Ontario Street

11

Burbank, California 91504

12

13

Agent authorized to accept service on behalf of above-  
signed party:

14

Name: WILLIAM E. TWISS

15

Title: President

16

Address: 2503 N. Ontario Street

17

Burbank, CA 91504

18

19

20

21

22

23

24

25

26

27

28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the  
2 matter of United States v. Lockheed Martin, et al., relating to  
3 the San Fernando Valley, Area 1 (North Hollywood) Superfund site,  
4 Burbank Operable Unit.

5 Dated:

For WILLIAM and EVELYN TWISS TRUST

6 By: W. E. Twiss

7 Name: WILLIAM E. TWISS

8 Title: President

9 Address: 2503 N. Ontario Street

10 Burbank, CA 91504

11 Agent authorized to accept service on behalf of above-  
12 signed party:

13 Name: WILLIAM E. TWISS

14 Title: President

15 Address: 2503 N. Ontario Street

16 Burbank, CA 91504

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: September 16, 1996 By: Valley Enamelling Corporation,  
a California corporation.

8 Name: Jerry Nerren  
9 Title: President

10 Address: 2509 N. Ontario Street  
11 Burbank, CA 91504

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: Charles H. Pomeroy  
15 McKenna & Cuneo, L.L.P.  
16 Title: Attorneys for the above party

17 Address: 444 S. Flower St., 7th Flr.  
18 Los Angeles, CA 90071

19 Telephone: (213) 243-6256  
20 (213) 688-1000

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: September 18, 1996

By: Denise E. McLaughlan

8 Name: Denise E. McLaughlan

9 Title: \_\_\_\_\_

10 Address: 4245 Clybourn Avenue

11 North Hollywood, CA 91602

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: (See Above)

15 Title: \_\_\_\_\_

16 Address: \_\_\_\_\_

17  
18 Telephone: ( )

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: September 18, 1996

By: Sharon Emmick Schrick

8 Name: Sharon Emmick Schrick

9 Title: \_\_\_\_\_

10 Address: 7525 Jeannie Court

11 Loomis, Calif. 957650

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: (see above) \_\_\_\_\_

15 Title: \_\_\_\_\_

16 Address: \_\_\_\_\_

17 \_\_\_\_\_  
18 Telephone: ( ) \_\_\_\_\_  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6  
7 Dated: September 18, 1996

By: Sandra E. Bowman

8 Name: Sandra E. Bowman

9 Title: \_\_\_\_\_

10 Address: 4245 Clybourn Avenue

11 North Hollywood, CA 91602

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: (See Above)

15 Title: \_\_\_\_\_

16 Address: \_\_\_\_\_

17 \_\_\_\_\_  
18 Telephone: ( )



1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6 HM HOLDINGS, INC.

7 Dated: September 20, 1996

By:

8 Name: SAMUEL J. FRIEDMAN

9 Title: Assistant Secretary

c/o SCM Chemicals

10 Address: 200 International Circle, Ste. 5000

11 Hunt Valley, MD 21030

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: WALTER A. STRINGFELLOW  
Attorney

15 Title: STRINGFELLOW & ASSOCIATES

A Law Corporation

16 Address: 444 S. Flower 31st Floor

17 Los Angeles, CA 90071

18 Telephone: (213) 538-3880

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter  
2 of United States v. Lockheed Martin, et al., relating to the San  
3 Fernando Valley, Area 1 (North Hollywood) Superfund Site, Burbank  
4 Operable Unit.

5  
6 PII BURBANK HOLDINGS, INC.

7 Dated: September 20, 1996

By: Samuel J. Friedman

8 Name: Samuel J. Friedman

9 Title: Assistant Secretary

c/o SCM Chemicals

10 Address: 200 International Circle,  
Ste. 5000

11 Hunt Valley, MD 21030

12 Agent authorized to accept service on behalf of above-signed  
13 party:

14 Name: WALTER A. STRINGFELLOW  
Attorney

15 Title: STRINGFELLOW & ASSOCIATES

A Law Corporation

16 Address: 444 S. Flower 31st Floor

17 Los Angeles, CA 90071

18 Telephone: (213) 538-3880

# **APPENDIX I**

Appendix 1  
Settling Cash Defendants, related Settling Defendants and  
related Released Parties

**SETTLING CASH DEFENDANTS (as indicated) (in capital letters)**  
**RELATED SETTTLING DEFENDANTS (as indicated) (in capital letters)**  
**Related Released Parties (indented and in upper and lower case letters)**

Accratronics Seals Corporation:

ACCRATRONICS SEALS CORPORATION, a California corporation (Settling Cash Defendant)

WILLIAM H. FISCH TRUST, DATED OCTOBER 29, 1993, a trust (related Settling Defendant)

JONES FAMILY TRUST, DATED MAY 14, 1993, a trust (related Settling Defendant)

William H. Fisch, as an individual and as trustee of the William H. Fisch Trust  
Delbert E. Jones, as an individual and as trustee of the Jones Family Trust

Adler Screw Products, Inc.:

ADLER SCREW PRODUCTS, INC., a California corporation (Settling Cash Defendant)

EIRIK LIRHUS (related Settling Defendant)

BERGLJOT LIRHUS (related Settling Defendant)

LIRHUS FAMILY TRUST, a trust (related Settling Defendant)

Aeroquip Corporation:

AEROQUIP CORPORATION, a Michigan corporation (Settling Cash Defendant)

TRINOVA CORPORATION, an Ohio corporation (related Settling Defendant)

A-H Plating, Inc.:

A-H PLATING, INC., a California corporation (Settling Cash Defendant)

THE WASCHAK FAMILY TRUST, a trust (related Settling Defendant)

JOHN P. WASCHAK, as trustee of The Waschak Family Trust (related Settling Defendant)

MELBA R. WASCHAK, as trustee of The Waschak Family Trust (related Settling Defendant)

Aviall Services, Inc.:

AVIALL SERVICES, INC., a Delaware corporation (Settling Cash Defendant)

Avica, Inc.:

AVICA, INC., a Texas corporation (Settling Cash Defendant)

(FORMERLY GENERAL CONNECTORS, INC.)

McENTEE FAMILY PARTNERSHIP, a partnership (related Settling Defendant)

James N. McEntee and Mary G. McEntee, as individuals and as trustees of  
the James N. McEntee and Mary G. McEntee Trust, dated August 26, 1982, a trust

B.J. Grinding, Inc.:

B.J. GRINDING, INC., a California corporation (Settling Cash Defendant)

ROBERT J. HOISETH AND GLENDA HOISETH (related Settling Defendant)

HOISETH FAMILY TRUST, a trust (related Settling Defendant)

Appendix 1  
Settling Cash Defendants, related Settling Defendants and  
related Released Parties

Joseph F. Bangs:

JOSEPH F. BANGS DBA BANGS MANUFACTURING COMPANY, a sole proprietorship  
(Settling Cash Defendant)

BANGS TRUST, DATED OCTOBER 3, 1990, a trust (related Settling Defendant)

Joseph F. and Doris B. Bangs, as individuals and as trustees of the Bangs Trust, dated  
October 3, 1990

Mel Bernie & Company, Inc.:

MEL BERNIE & COMPANY, INC., a California corporation, DBA ACCESSORY PLATING  
and 1928 JEWELRY LTD. (Settling Cash Defendant)

LAURIE S. BERNIE AND MELVYN J. BERNIE, AS INDIVIDUALS (related Settling  
Defendant)

LAURIE S. BERNIE AND MELVYN J. BERNIE, AS TRUSTEES OF THE BERNIE  
TRUST (related Settling Defendant)

THE BERNIE TRUST, a trust (related Settling Defendant)

Burmar Metal Finishing Corp.:

BURMAR METAL FINISHING CORP., a California corporation  
DBA BARRON ANODIZING AND PAINT (Settling Cash Defendant)

Crane Co.:

CRANE CO., a Delaware corporation/HYDRO-AIRE DIVISION (Settling Cash Defendant)  
Hydro-Aire, formerly a California corporation

Deltron Engineering, Inc.:

DELTRON ENGINEERING, INC., a California corporation (Settling Cash Defendant)

FILIJAN AND KUEBLER PROPERTIES, a California partnership (related Settling  
Defendant)

MICHAEL FILIJAN (related Settling Defendant)

TONY KUEBLER (related Settling Defendant)

Hydra-Electric Company:

HYDRA-ELECTRIC COMPANY, a California corporation (Settling Cash Defendant)

Hydra Electric International Limited, a United Kingdom corporation

Hidra Control S.A de C.V., a Mexico corporation

Cryogenic Applications Inc., a California corporation

DAVIS INDUSTRIES, INC., a Nevada corporation (related Settling Defendant)

Davis Trust No. 1, a trust, Allen V.C. Davis, trustee

Janco Corporation:

JANCO CORPORATION, a California corporation (Settling Cash Defendant)

BKT ENTERPRISES, INC., a California corporation (related Settling Defendant)

Appendix 1  
Settling Cash Defendants, related Settling Defendants and  
related Released Parties

Joslyn Sunbank Company:

JOSLYN COMPANY, LLC FKA JOSLYN COPRORATION, a  
Delaware corporation (Settling Cash Defendant)

JOSYLN SUNBANK COMPANY, LLC, FKA JOSLYN SUNBANK CORPORATION, a  
Delaware corporation (related Settling Defendant)

Sunbank Family of Companies, Inc., a California corporation

Ocean Technology, Inc.:

OCEAN TECHNOLOGY, INC., a California corporation (Settling Cash Defendant)

TEXTRON INC., Delaware corporation (related Settling Defendant)

HR TEXTRON INC., a Delaware corporation (related Settling Defendant)

Pacific Partnership:

PACIFIC PARTNERSHIP, a California partnership (Settling Cash Defendant)

Sargent Industries, Inc./Kahr Bearing Division:

SARGENT INDUSTRIES, INC., a Delaware corporation/KAHR BEARING DIVISION  
(Settling Cash Defendant)

ANTONINI FAMILY TRUST, a trust (Settling Cash Defendant)

MARIO E. ANTONINI AND MARISI A. ANTONINI, as trustees (Settling Cash Defendant)

Sierracin Corporation:

SIERRACIN CORPORATION, a California corporation (Settling Cash Defendant)

INDUSTRIAL BOWLING CORPORATION, a California corporation (related Settling  
Defendant)

Harrison Corporation, a California corporation

R&G Sloane Manufacturing Co., Inc.:

R&G SLOANE MANUFACTURING CO., INC., a Delaware corporation (Settling Cash  
Defendant),

Space-Lok, Inc.:

SPACE-LOK, INC., a California corporation, LERCO DIVISION (Settling Cash Defendant)

THE ESTATE OF ALBINA BREBBIA (related Settling Defendant)

CHRISTINA COGAR, INDIVIDUALLY AND AS EXECUTRIX FOR THE ESTATE OF  
ALBINA BREBBIA (related Settling Defendant)

Stainless Steel Products, Inc.:

STAINLESS STEEL PRODUCTS, INC., a California corporation (Settling Cash Defendant)

ZIMMERMAN HOLDINGS, INC., a California corporation (related Settling Defendant)

THE UHLMANN OFFICES, a California corporation, SUNHILL PARTNERS, a  
California partnership (related Settling Defendant)

Appendix 1  
Settling Cash Defendants, related Settling Defendants and  
related Released Parties

Steve's Plating Corporation:

STEVE'S PLATING CORPORATION, a California corporation (Settling Cash Defendant)

TERRY S. KNEZEVICH (related Settling Defendant)

UNIFACTOR, INC., a California corporation (related Settling Defendant)

WALTON R. EMMICK (Settling Cash Defendant)

Walton R. Emmick Living Trust, a trust

Emmick Investment Company, an unincorporated entity

Emmick Investment Company Partnership #1, a partnership

Harold Emmick

Zola Emmick

S.D.S. Family Trust, a trust

S.D.S. Joint Venture, a partnership

SDS Management Corporation, a California corporation

CLELTA SPELMAN (Settling Cash Defendant)

Spelman Family Trust, a trust

Surface Finishing, Inc.:

DIANE BARR (Settling Cash Defendant)

ELAINE S. BARR (Settling Cash Defendant), as an individual and as trustee of the Homer R. Barr and Elaine S. Barr Family Trust

THE HOMER R. BARR AND ELAINE S. BARR FAMILY TRUST, a trust (Settling Cash Defendant)

Surface Finishing, Inc., a California corporation

Glenart Enameling Co., Inc., a California corporation

L.A. Gauge Company, Inc.:

L.A. GAUGE COMPANY, INC., a California corporation (Settling Cash Defendant)

[The Triumph Group Operations, Inc., a Delaware corporation]

THE TRIUMPH GROUP OPERATIONS, INC., DBA L.A. GAUGE COMPANY, INC.

ALCO Standard Corporation, an Ohio corporation

Nicholas P. and Margaret Trist

Twiss Heat Treating Co., Inc.:

TWISS HEAT TREATING CO., INC., a California corporation,

DBA TWISS HEAT TREATING CO. (Settling Cash Defendant)

THE WILLIAM E. AND EVELYN TWISS FAMILY TRUST, a trust (related Settling Defendant)

WILLIAM E. TWISS AND EVELYN TWISS (related Settling Defendant)

W AND E TWISS TRUST, a trust (related Settling Defendant)

Appendix 1  
Settling Cash Defendants, related Settling Defendants and  
related Released Parties

Valley Enamelling Corp.:

VALLEY ENAMELLING CORP., a California corporation (Settling Cash Defendant)

WALTON R. EMMICK (Settling Cash Defendant)

Walton R. Emmick Living Trust, a trust

Emmick Investment Company, an unincorporated entity

Emmick Investment Company Partnership #1, a partnership

Harold Emmick

Zola Emmick

S.D.S. Family Trust, a trust

S.D.S. Joint Venture, a partnership

SDS Management Corporation, a California corporation

DENISE E. MCLAUGHLAN (Settling Cash Defendant)

Emmick Investment Company Partnership #1, a partnership

Emmick Investment Company, a partnership/Meriam Emmick

SHARYN E. SCHRICK (Settling Cash Defendant)

Emmick Investment Company Partnership #1, a partnership

Emmick Investment Company, a partnership/Meriam Emmick

SANDRA E. BOWMAN (Settling Cash Defendant)

Sandra Emmick

Sandra E. Bowman Trust, a trust

Emmick Investment Company Partnership #1, a partnership

Emmick Investment Company, a partnership/Meriam Emmick

Meriam Emmick

Weber Aircraft, Inc.:

HM HOLDINGS, INC., a Delaware corporation (Settling Cash Defendant)

PH BURBANK HOLDINGS, INC., a Delaware corporation (Settling Cash Defendant)

WEBER AIRCRAFT, INC., a Delaware corporation (related Settling Defendant)



**Appendix 1**  
**Settling Work Defendant, Lockheed Martin Corporation and**  
**their related Released Parties**

**CITY OF BURBANK, a charter city (Settling Work Defendant)**

The Burbank Housing Authority  
The Burbank Youth Endowment Services Fund  
The Burbank Redevelopment Agency  
The Burbank Public Improvement Corporation  
The Burbank Parking Authority

**LOCKHEED MARTIN CORPORATION, a Maryland corporation**

And its current and former subsidiaries, divisions, and affiliates, including not limited to the following:

Lockheed-California Company  
Lockheed Martin Aeronautical Systems, fka Lockheed Aeronautical Systems Company  
Lockheed Martin Skunk Works, fka Lockheed Advanced Development Company  
Lockheed Missiles and Space Company, Inc.  
Lockheed Corporation

# **APPENDIX II**

Appendix 2  
Owner Settling Defendants

**ACCRATRONICS SEALS CORPORATION site:**

William H. Fisch Trust, dated 10/29/93  
Jones Family Trust, dated 5/14/93  
2211-2121 Kenmere Avenue  
Burbank, CA 91504

**ADLER SCREW PRODUCTS, INC.**

Lirhus Family Trust  
3047 North California Street  
Burbank, CA 91504

**A-H PLATING, INC. site:**

The Waschak Family Trust  
John P. Waschak, trustee  
Melba R. Waschak, trustee  
1837 Victory Place  
Burbank, CA 91504

**ALIGN-RITE CORPORATION site:**

Denise E. McLaughlan  
Sharyn E. Schrick  
Sandra E. Bowman Trust  
Sandra E. Bowman, Trustee  
2420, 2422, 2424, 2428 North Ontario Street  
Burbank, CA 91504

**AVICA, INC. site:**

McEntee Family Partnership  
3205 Burton Avenue  
Burbank, CA 91504

**B.J. GRINDING, INC. site:**

Hoiseth Family Trust  
Robert J. Hoiseth and Glenda I. Hoiseth, Trustees  
2632 North Ontario Street  
Burbank, CA 91504

**JOSEPH F. BANGS DBA BANGS MANUFACTURING COMPANY site:**

Bangs Trust  
Joseph F. Bangs and Doris B. Bangs, Trustees  
1601 West Burbank Boulevard  
Burbank, CA 91506

Appendix 2  
Owner Settling Defendants

MEL BERNIE AND CO., INC., DBA 1928 JEWELRY LTD. AND ACCESSORY  
PLATING sites:

The Bernie Trust  
Laurie S. Bernie, trustee  
Melvyn J. Bernie, trustee  
3000 Empire Avenue  
Burbank, CA 91505

1928 Jewelry, Ltd.  
2701, 2703, 2707, 2721, 3110, 3120 West Empire Avenue  
2215 North Naomi Avenue  
2216 North Catalina  
2220 North Fairview Street  
Burbank, CA 91505

CRANE CO./HYDRO-AIRE DIVISION site:

Crane Co.  
3000 Winona Avenue  
Burbank, CA 91504

DELTRON ENGINEERING, INC. site:

Filijan and Kuebler Properties  
2800 North San Fernando Boulevard  
Burbank, CA 91504

HYDRA-ELECTRIC COMPANY site:

Davis Industries, Inc.  
3151 Kenwood Street  
Burbank, CA 91505

JANCO CORPORATION site:

BKT Enterprises, Inc.  
3111 Winona Avenue  
Burbank, CA 91508

SARGENT INDUSTRIES, INC./KAHR BEARING DIVISION site:

Antonini Family Trust  
3010 North San Fernando Boulevard  
Burbank, CA 91504

**Appendix 2**  
**Owner Settling Defendants**

**SIERRACIN CORPORATION site:**  
Industrial Bowling Corporation  
3020 Empire Boulevard  
Burbank, CA

**SPACE-LOK, INC. site:**  
Estate of Albina Brebbia  
2526 North Ontario Street  
Burbank, CA 91504

**STAINLESS STEEL PRODUCTS, INC. site:**  
The Uhlmann Offices, a California corporation./  
Sunhill Partners, a California partnership  
2980 San Fernando Road  
Burbank, CA 91504

**STEVE'S PLATING CORPORATION site:**  
Walton R. Emmick Living Trust  
Walton R. Emmick, Trustee  
Spelman Family Trust  
Clelta Spelman, Trustee  
3101, 3111 and 3113 San Fernando Road  
Burbank, CA 91504

**SURFACE FINISHING, INC./GLENART ENAMELING CO., INC. site:**  
Homer R. Barr and Elaine S. Barr Family Trust  
2501 North Ontario Street  
Burbank, CA 91504

**L.A. GAUGE CO., INC. site:**  
L.A. Gauge Company, Inc.  
7440 San Fernando Road  
Sun Valley, CA 91352-4398

**TWISS HEAT TREATING CO., INC. site:**  
The William E. and Evelyn Twiss Family Trust  
William E. Twiss, Trustee  
Evelyn Twiss, Trustee  
2503 North Ontario Street  
Burbank, CA 91504

Appendix 2  
Owner Settling Defendants

VALLEY ENAMELLING CORP. site:

Denise E. McLaughlan  
Sharyn E. Schrick  
Sandra E. Bowman Trust  
Sandra E. Bowman, Trustee  
2509 North Ontario Street  
Burbank, CA 91504

WEBER AIRCRAFT, INC. site:

PH Burbank Holdings, Inc.  
2801, 2820, 2913, 2917, 2923, 2925 2927, and 2929 North Ontario Street  
3000 North San Fernando Road  
3056 and 3068 North California Street  
Burbank, CA 91504

Appendix 2  
Settling Work Defendant and Lockheed Martin Corporation as  
Owner Settling Defendants

CITY OF BURBANK site:

164 West Magnolia Boulevard  
Burbank, CA 91504

LOCKHEED MARTIN CORPORATION site:

Plant A-1  
2555 North Hollywood Way  
Burbank, CA 91505

Building 32  
3401 West Empire Avenue  
Burbank, CA 91504

Building 76, 76A  
2311 North Hollywood Way  
Burbank, CA 91506

Building B-1  
1706 North Victory Place  
Burbank, CA 91504

Building 170  
2500 West Empire Avenue  
Burbank, CA 91504

Building 199  
1085 West Victory Boulevard  
Burbank, CA 91506

Plant B-6  
2801 North Hollywood Way  
Burbank, CA 91505

Building 360  
7575 North San Fernando Road  
Burbank, CA 91505

# **APPENDIX III**



Appendix 3  
Settling Defendants  
excepted from Section XXII  
(Covenants not to Sue by Plaintiffs),  
Paragraphs A, B and C

ACCRATRONICS SEALS CORPORATION  
WILLIAM H. FISCH TRUST, DATED OCTOBER 29, 1993  
JONES FAMILY TRUST, DATED MAY 14, 1993

ADLER SCREW PRODUCTS, INC.  
EIRIK LIRHUS  
BERGLJOT LIRHUS  
LIRHUS FAMILY TRUST

AVICA, INC.  
(FORMERLY GENERAL CONNECTORS, INC.)  
MCENTEE FAMILY PARTNERSHIP

B. J. GRINDING, INC.  
ROBERT J. HOISETH AND GLENDA HOISETH  
HOISETH FAMILY TRUST

JOSEPH F. BANGS DBA BANGS MANUFACTURING COMPANY  
BANGS TRUST

LAURIE S. BERNIE AND MELVYN J. BERNIE, AS INDIVIDUALS AND AS  
TRUSTEES OF THE BERNIE TRUST  
MEL BERNIE & CO., INC.  
DBA ACCESSORY PLATING AND 1928 JEWELRY LTD.  
THE BERNIE TRUST

BURMAR METAL FINISHING CORP.  
DBA BARRON ANODIZING AND PAINT

DELTRON ENGINEERING, INC.  
FILIJAN AND KUEBLER PROPERTIES  
MICHAEL FILIJAN  
TONY KUEBLER

PACIFIC PARTNERSHIP

R&G SLOANE MANUFACTURING CO., INC.

Appendix 3  
Settling Defendants  
excepted from Section XXII  
(Covenants not to Sue by Plaintiffs),  
Paragraphs A, B and C

SPACE-LOK, INC.  
THE ESTATE OF ALBINA BREBBIA  
CHRISTINA COGAR INDIVIDUALLY AND  
AS EXECUTRIX FOR THE ESTATE OF ALBINA BREBBIA

DIANE BARR  
ELAINE S. BARR  
THE HOMER R. BARR AND ELAINE S. BARR FAMILY TRUST

TWISS HEAT TREATING CO., INC. DBA TWISS HEAT TREATING CO.  
THE WILLIAM E. AND EVELYN TWISS FAMILY TRUST  
WILLIAM E. TWISS AND EVELYN TWISS  
W AND E TWISS TRUST

VALLEY ENAMELLING CORP.  
WALTON R. EMMICK  
DENISE E. MCLAUGHLAN  
SHARYN E. SCHRICK  
SANDRA E. BOWMAN  
CLELTA SPELMAN

# **APPENDIX IV**

San Fernando Valley Superfund Site  
Burbank Operable Unit

Second Explanation of Significant Differences  
to the  
Record of Decision

United States Environmental Protection Agency  
Region IX - San Francisco, CA  
February 12, 1997

SECOND  
EXPLANATION OF SIGNIFICANT DIFFERENCES  
DECLARATION

SITE NAME AND LOCATION

San Fernando Valley Area 1  
Burbank Operable Unit  
Los Angeles County, California

I. Statement of Basis and Purpose

This decision document presents the Second Explanation of Significant Differences (ESD2) to the interim remedial action selected by the Burbank Operable Unit (Burbank OU) Record of Decision (ROD) signed June 1989. The Burbank OU ROD was previously modified by an Explanation of Significant Differences dated November 1990 (ESD1). Additional changes to the remedy were made in a 1992 Consent Decree, which was approved by the Central District of California federal court. ESD2 has been developed in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601 et. seq.) and the National Contingency Plan (40 C.F.R. Section 300 et. seq.).

II. Description of the Selected Remedy in the ROD and ESD1

The Burbank OU ROD selected the interim remedy for an area of groundwater contamination, located within the San Fernando Valley Area 1 Superfund Site, which encompasses wellfields which were operated by the City of Burbank prior to being shut down as a result of the contamination. The ROD selected extraction of contaminated groundwater, treatment by air or steam stripping, and use of the treated water as a public water supply by the City of Burbank. The interim remedy was estimated to cost \$69 million over 20 years (in 1989 dollars).

The ROD selected as the interim remedy the extraction and treatment of groundwater at a rate of 12,000 gallons per minute (gpm). This was considered to be the extraction rate necessary to hydraulically control, i.e. to prevent the spreading of, groundwater at concentrations of 100 parts per billion (ppb) of trichloroethylene (TCE) and 5 ppb of perchloroethylene (PCE). Extraction wells were to be placed in locations which would control plume migration while initiating aquifer restoration. The treatment technology specified was either air stripping or steam stripping, with off-gas control.

The ROD states that the treated water must meet all existing federal and state Maximum Contaminant Levels (MCLs) and State Action Levels (SALs). It also states that the water must meet all drinking water treatment technology requirements. The ROD states a preference for delivering the treated water to the City of Burbank's distribution system for use as a public water supply. Using the treated water in this manner was considered preferable to discharging the water to waste because it represents a beneficial use of the groundwater resource in a water-poor region.

### III. Summary of ESD1

ESD1 clarified and superseded certain parts of the Burbank OU ROD, as follows.

Based on new information regarding the occurrence of nitrate in the groundwater (nitrate levels turned out to be higher than anticipated), it became clear that additional treatment measures would be required in order for the extracted and treated groundwater to be used as a public water supply. EPA decided to require blending of the extracted and treated Burbank OU groundwater with a water supply lower in nitrates, such that the MCL is achieved in water served to the public.

The nitrate blending requirement increased the total amount of water produced by the interim remedy. The total amount to be produced was high enough that the possibility was raised that the City of Burbank would not be able to accept the total quantity of water produced at the Burbank OU. Other local water purveyors were unwilling to commit to accept excess water produced by the Burbank OU treatment plant. Therefore, in order to ensure that the interim remedy would continue to extract contaminated groundwater at the intended capacity, EPA decided to require reinjection of any excess water.

EPA clarified that the interim remedy could be designed, constructed, and operated in phases. Phasing the project allows for initial completion of a portion of the total extraction wellfield and treatment plant capacity. Operation of this first phase of the project allows collection of data on aquifer response and treatment plant efficiency. This data helps the design engineer to optimize the design of the following project phases, and helps to optimize overall groundwater containment and treatment efficiency for the project.

EPA clarified statements in the ROD pertaining to containment of groundwater containing TCE at 100 ppb and PCE at 5 ppb. These levels are not treatment goals to be attained in groundwater, but

are to be used in designing the containment area to be developed by the extraction wellfield.

Because of the addition of reinjection as a component of the project, ARARs pertaining to reinjection of extracted and treated groundwater were identified. Specifically mentioned was the "Statement of Policy with Respect to Maintaining High Quality of Waters in California," which requires that reinjected water not degrade existing water quality.

The additional cost due to ESD1 changes in the interim remedy were estimated at \$8.8 million over 20 years (in 1990 dollars).

#### IV. Summary of Additional Significant Differences (ESD2)

Based on additional study of the local (Burbank OU) groundwater system by Lockheed Martin, and by EPA's consultant CH2M Hill, EPA has concluded that an extraction rate of 9,000 gpm results in substantially the same level of groundwater containment as an extraction rate of 12,000 gpm. Overall costs are reduced at the lower extraction rate, because the need to construct and operate expensive reinjection facilities is eliminated. Cost effectiveness is improved because the lower extraction rate makes it less likely that the upper groundwater zone will become de-watered, and thus will allow EPA to achieve its goal of preferentially pumping the most contaminated zones. Based on these factors, EPA has lowered the interim remedy extraction rate to 9,000 gpm.

EPA has decided to eliminate reinjection as a requirement based on projections that there will essentially be no excess water at the revised groundwater extraction rate. The City of Burbank can substantially accept, and has committed to accept, an average of 9,000 gpm from the interim remedy facilities.

Due to elimination of reinjection from the project, the Burbank OU groundwater extraction rate will not be a continuous 9,000 gpm. The instantaneous extraction rate will fluctuate with the City of Burbank's water demand. In recognition of the likelihood that it will not be possible to extract groundwater at a rate of 9,000 gpm, twenty-four hours a day, three hundred and sixty-five days a year, EPA is specifying that the new extraction rate will be achieved as an average rate, not an instantaneous rate.

EPA has also decided to suspend the 9,000 gpm extraction rate requirement during times when nitrate levels in the extracted groundwater exceed 50 mg/l as nitrate. The ability to maintain an annual extraction rate of 9,000 gpm is not only dependent on the City of Burbank's water demand, but also upon nitrate concentrations in the extracted groundwater. It is possible that

these concentrations may rise high enough such that, during periods of low water demand, it is not possible to extract an average of 9,000 gpm and also meet the nitrate MCL. EPA's analysis suggests that even under the worst case scenario for nitrates, an average of 8,500 gpm would be pumped. EPA believes the interim remedy will continue to be protective of human health and the environment even at this slightly reduced groundwater extraction rate, which, if it occurs, will only occur on an occasional basis. -

EPA estimates that changes to the interim remedy effected by ESD2 will reduce implementation costs by \$49 million (1995 dollars).

Further, the City of Burbank holds a public water supply operating permit, issued by the California Department of Health Services. This permit has been amended to cover operation of the Burbank OU treatment facilities. The requirements of this permit will govern off-site requirements for drinking water protectiveness.

V. Declaration

The selected remedy, as modified by this ESD, is protective of human health and the environment, attains federal and state requirements that are applicable, or relevant and appropriate, to this interim remedial action, and is cost-effective. This remedy satisfies the statutory preference for remedies that employ treatment which permanently and significantly reduces the volume, toxicity or mobility of the hazardous substances as a principal element. It also complies with the statutory preference for remedies that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. As part of the remedy, groundwater monitoring will be conducted to track contaminant levels at the Burbank Operable Unit and to monitor the performance of the extraction and treatment system in order to ensure adequate protection of human health and the environment.

Keith Takata  
Keith Takata  
Director, Superfund Division

2-12-97  
Date



San Fernando Valley Area 1, Burbank Operable Unit

SECOND EXPLANATION OF SIGNIFICANT DIFFERENCES

February 12, 1997

I. Introduction

On June 30, 1989, the U.S. Environmental Protection Agency (EPA) signed a Record of Decision (ROD) for the San Fernando Valley Area 1 Superfund Site, Burbank Operable Unit (Burbank OU). On November 21, 1990, EPA signed an Explanation of Significant Differences (ESD1) modifying the interim remedial action selected in the ROD. The purpose of this Second Explanation of Significant Differences (ESD2) is to explain additional modifications to the interim remedial action.

Under Section 117 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendment and Reauthorization Act of 1986, and pursuant to 40 C.F.R. Sec. 300.435(c)(2)(i) (55 Fed. Reg. 8666, 8852 (March 8, 1990)), EPA is required to publish an Explanation of Significant Differences when significant (but not fundamental) changes are made to a final remedial action plan as described in a ROD.

This document provides a brief background of the Site, a summary of the remedy selected in the Burbank OU ROD, a summary of changes made to the remedy by ESD1, a description of the changes to the remedy EPA is making in this ESD2 (including how the changes affect and better refine the remedy selected in the ROD), and an explanation of why EPA is making these changes.

EPA is issuing ESD2 in order to take into account technical data received after ESD1 was signed in November, 1990. The changes are: (1) Based on additional study of the local (Burbank OU) groundwater system, EPA has concluded that an extraction rate of 9,000 gallons per minute (gpm) results in substantially the same level of groundwater containment as an extraction rate of 12,000 gpm. Therefore, the interim remedy extraction rate has been reduced to 9,000 gpm; (2) EPA is specifying that the new extraction rate will be achieved as an average rate, not an instantaneous rate; (3) EPA has decided to eliminate reinjection as a requirement based on projections that, on an annual basis, there will be no excess water at the revised groundwater extraction rate; and, (4) EPA has decided that the specified average extraction rate need not be met during times when nitrate levels in the extracted groundwater exceed 50 mg/l, because under this circumstance a greater quantity of blending water will be

required, leaving the City of Burbank less capacity to accept extracted groundwater for use as a public water supply.

ESD2 and the supporting documentation will become part of the Burbank OU Administrative Record. Copies of the Administrative Record have been placed at the following locations:

City of Burbank Public Library  
110 North Glenoaks Boulevard  
Burbank, CA 91502  
818-953-9737

City of Glendale Public Library  
222 East Harvard Street  
Glendale, CA 91205  
818-956-2027

## II. Background

### A. Site background and description

The following gives a brief background of the Burbank OU and a short summary of the remedy selected in the ROD and modified by ESD1. Further background information can be found in the ROD (dated June 30, 1989), and in ESD1 (dated November 20, 1990), as well as in other documents in the Burbank OU Administrative Record.

In June 1986, EPA evaluated the threat posed by groundwater contamination at a number of water supply wellfields within the San Fernando Valley and Verdugo groundwater basins. The chief contaminants of concern are trichloroethylene (TCE) and perchloroethylene (PCE). As a result of its investigation, EPA designated four wellfield areas as National Priorities List (NPL) sites. EPA is managing the four sites as a single project consistent with CERCLA Section 104(d)(4).

The San Fernando Valley Groundwater Basin has historically been an important source of drinking water for the Los Angeles metropolitan area, including the City of Burbank. The groundwater basin provides enough water to serve approximately 600,000 residents.

Groundwater extracted from the basin is especially important during years of drought. Due to contamination by volatile organic chemicals (VOCs), including TCE and PCE, beneficial use of the groundwater resource has been partially lost. Surface water supplies have replaced the lost resource, but are costly, and may not be available in the future due to periodic drought conditions and the potential for changing water rights policy.

The Burbank OU is located within the San Fernando Valley groundwater basin and encompasses wellfields which were operated by the City of Burbank prior to being shut down as a result of contamination. The Burbank OU was specifically developed to address this areal extent of groundwater contamination.

The City of Burbank's production wells have been shut down since the early 1980s because of the presence of TCE and PCE in concentrations exceeding federal and state Maximum Contaminant Levels (MCLs). Consequently, the city purchases close to one hundred percent of its water from the Metropolitan Water District of Southern California, which supplies surface water imported from outside the San Fernando basin. (The city does operate a granular activated carbon groundwater extraction and treatment plant during parts of the year, but the contribution of this plant toward meeting the overall water demand is small.)

B. Selected remedy as modified by ESD1

The Burbank OU ROD selected the interim remedy for an area of groundwater contamination generally located within the San Fernando Valley Area 1 Superfund Site. The ROD selected extraction of contaminated groundwater, treatment by air or steam stripping, and use of the treated water as a public water supply by the City of Burbank. The interim remedy was estimated to cost \$69 million over the 20 year planned length of the interim remedy. ESD1 added the requirement to blend the extracted, treated, water with a lower nitrate source in order to meet nitrate MCLs. ESD1 also added the requirement for reinjection of excess water that the city could not accept due to water demand limitations. The changes to the interim remedy caused by ESD1 were estimated to cost \$8.8 million, raising the total estimated project cost to \$77.8 million (in 1989/1990 dollars).

Based on analyses conducted by the Los Angeles Department of Water and Power, through their consultant James M. Montgomery, in the Burbank OU Feasibility Study, the ROD specified that groundwater would be extracted and treated at a rate of 12,000 gpm. This rate was considered necessary in order to control plume migration and to initiate aquifer restoration. The 12,000 gpm rate was projected to hydraulically contain groundwater having a concentration of 100 parts per billion (ppb) of TCE and 5 ppb of PCE. ESD1 clarified that these levels are not treatment goals to be attained in groundwater, but are to be used in designing the containment area to be developed by the extraction wellfield.

The ROD states that the treated water must meet all existing federal and state MCLs and State Action Levels (SALs). It also states that the water must meet all drinking water treatment technology requirements. The treated water is being delivered to

the City of Burbank's distribution system for use as a public water supply. Use of the treated water in this manner is considered preferable to discharging the water to waste because it restores the groundwater resource to beneficial use.

With respect to meeting drinking water standards, ESD1 concluded that, based on new information suggesting high nitrate levels in the groundwater, additional measures were required to meet the MCL for nitrate in the extracted and treated water. EPA decided to require blending of the extracted and treated groundwater with a water supply lower in nitrates, such that the MCL is achieved in water served to the public.

Addition of the nitrate blending requirement raised the possibility that the City of Burbank would not be able to accept the total quantity of water produced by the interim remedy. This is because nitrate blending raises water production, from the initially anticipated rate of 12,000 gpm, to a rate as high as 24,000 gpm. Under ESD1, EPA decided to require reinjection of any excess water, or water the City of Burbank could not use as a public water supply due to insufficient demand. EPA also identified Applicable or Relevant and Appropriate Requirements (ARARs) pertaining to reinjection of extracted and treated groundwater, specifically, the "Statement of Policy with Respect to Maintaining High Quality of Waters in California," which requires that reinjected water not degrade existing water quality.

Under ESD1, EPA also clarified that the interim remedy could be designed, constructed, and operated in phases. Phasing the project allows for initial completion of a portion of the total extraction wellfield and capacity treatment plant capacity. Operation of this first phase of the project allows collection of data on aquifer response and treatment plant efficiency. This data helps the design engineer to optimize the design of the following project phases, and helps to optimize overall groundwater containment and treatment efficiency for the project.

Portions of the Burbank OU ROD and ESD1 have already been implemented through a 1992 Consent Decree and a Unilateral Administrative Order. EPA also made additional operational changes in the interim remedy in the 1992 consent decree, which was approved by the Central District of California federal court. The 1992 consent decree, captioned United States of America v. Lockheed Corporation et al., Civil Action No. 91-4527 MRP(Tx), is included in the Administrative Record.

Under the Consent Decree, Lockheed Martin and the City of Burbank have constructed the first phase of the interim remedy. Under the Unilateral Administrative Order, a group of parties associated with six other Burbank facilities have constructed the

blending facility, the purpose of which is to reduce nitrates in the extracted, treated groundwater. The first phase of the interim remedy was completed and became operational in January 1996. The first phase consists of groundwater extraction and treatment at a rate of 6,000 gpm, blending with Metropolitan Water District water, and use of the treated, blended water as a public water supply.

### III. Summary of Significant Differences

ESD2 provides for the following changes to the interim remedy:

1) EPA has lowered the interim remedy extraction rate to 9,000 gpm. Based on additional study of the local (Burbank OU) groundwater system during the Remedial Design phase, EPA has concluded that an extraction rate of 9,000 gpm results in substantially the same level of groundwater containment as an extraction rate of 12,000 gpm. Cost effectiveness is improved at the lower extraction rate, not only due to the reduced cost of pumping less water, but because the need to construct and operate expensive reinjection facilities is eliminated. In addition, the lower extraction rate makes it less likely that the upper groundwater zone will become de-watered, and thus will allow EPA to achieve its goal of preferentially pumping the most contaminated zones.

2) EPA has decided to eliminate reinjection as a requirement. This decision is based on projections that, under existing aquifer conditions, there will be no excess water (i.e. water that cannot be used by the City of Burbank as a public water supply) produced at the revised groundwater extraction rate. The City of Burbank has committed to accept an annual average of 9,000 gpm from the interim remedy facilities.

3) EPA is specifying that "the 9,000 gpm extraction rate will be achieved as an average rate, not as an instantaneous rate. Due to elimination of reinjection, the instantaneous rate will fluctuate with the City of Burbank's water demand. EPA recognizes that it will not be possible to extract groundwater at a rate of 9,000 gpm, twenty-four hours a day, three hundred and sixty-five days a year. However, EPA's analysis suggests that under the worst case scenario for nitrates, groundwater can be extracted at a minimum rate of 8,500 gpm. EPA believes protectiveness of human health and the environment is maintained even at this slightly reduced rate, which, if necessary, will only be necessary on an occasional basis. In order to maximize the amount of groundwater pumped, EPA has decided to count groundwater extraction from the city's granular activated carbon treatment plant toward the 9,000 gpm average rate. This wellfield will most likely be used by the city during the summer

to meet peak water demand. The City of Burbank has agreed to maximize its use of treated groundwater. These decisions and agreements are to be included in a second consent decree between EPA, the city, and numerous Burbank parties.

4) EPA has decided to suspend the 9,000 gpm extraction rate requirement during times when nitrate levels in the extracted groundwater exceed 50 mg/l as nitrate. This decision is being made to ensure that under no circumstances will the MCL for nitrate be exceeded in the treated water. The ability to maintain an annual extraction rate of 9,000 gpm is not only dependent on the City of Burbank's water demand, but also upon nitrate concentrations in the extracted groundwater and in the blending water. It is possible that these concentrations may rise high enough such that, during periods of low water demand, it is not possible to extract an average of 9,000 gpm and also meet the nitrate MCL. However, as mentioned in the above paragraph, the City of Burbank has agreed to maximize its use of treated groundwater.

Lockheed Martin has estimated that changes to the interim remedy effected by ESD2 will reduce implementation costs by 49 million dollars (1995 dollars), and EPA is in agreement with this estimate.

#### IV. Explanation and Detailed Description of Changes and Clarifications

After the ROD and ESD1 were signed, EPA received and reviewed new data from its Alternative Remedial Contracting Strategy (ARCS) contractor CH2M Hill, from the City of Burbank, and from the Lockheed Martin Corporation, regarding the Burbank OU groundwater system. This new information included both data collected in the field (from groundwater monitoring wells) and the output from computer modeling exercises. Reports and technical memoranda were generated compiling this data, which project that the implementation of ESD2 will not reduce the protectiveness of the Burbank OU interim remedy. Thus, EPA's conclusion in the ROD and ESD1 that the interim remedy is protective of human health and the environment has not changed. The new and existing technical information that EPA relied upon to prepare ESD2 is identified in the discussion which follows, and this information can be found in the Burbank OU Administrative Record.

##### A. Background

Based on this new information, EPA has concluded that a lower pumping rate than originally projected will result in the desired degree of containment of the VOC contaminant plume in the vicinity of the Burbank OU. This projection results from an

improved ability on EPA's part to predict aquifer response to pumping, made possible because real operating data is now available from Phase 1 of the Burbank OU interim remedy, which includes a 6,000 gpm groundwater extraction wellfield. In addition, the local groundwater flow models designed by CH2M Hill and by Lockheed Martin have undergone additional improvement and verification since the ROD was written. Results from both models predict that a 9,000 gpm extraction rate achieves the goals of the ROD.

EPA believes it is important to implement this change not only because it is based on sound scientific analysis, but also because of cost savings to the project. Reducing the pumping rate allows for elimination of costly reinjection facilities required under ESD1. The lower pumping rate also ensures that EPA will be able to pump from the most contaminated zones of the aquifer without dewatering the aquifer.

EPA, with the assistance of CH2M Hill, the City of Burbank, and Lockheed Martin, performed the following analysis in reaching these conclusions.

#### B. Options

While CERCLA Section 117(c) and 40 C.F.R. Section 300.435(c)(2)(i) merely require an explanation of significant differences and the reason for these differences, ESD2 sets out in detail four options regarding the rate of groundwater extraction, along with EPA's analysis of these options. The four options are as follows:

1. Extraction and treatment of an annual average of 6,000 gpm of groundwater from the existing Phase 1 Burbank OU wellfield, with use of the treated water by the City of Burbank (this phase of the project is currently in operation; therefore, if Option 1 were selected, no further construction would be required at the Burbank OU);
2. Extraction and treatment of an annual average of 9,000 gpm of groundwater from the existing Phase 1 Burbank OU wellfield, and the planned Phase 2 wellfield, with use of the treated water by the City of Burbank;
3. Extraction and treatment of an annual average of 12,000 gpm of groundwater from the existing Phase 1 and proposed Phase 2 and Phase 3 Burbank OU wellfields, with use of the treated water by the City of Burbank, with conveyance of excess water to other purveyors;
4. Extraction and treatment of an annual average of 12,000 gpm of groundwater from the existing Phase 1 and proposed Phase 2 and

Phase 3 Burbank OU wellfields, with use of the treated water by the City of Burbank, and reinjection of excess water (this is the option selected by the ROD as modified by ESD1).

### C. Analysis of options

The four options presented above were compared with each other based on the nine criteria listed and explained in the National Contingency Plan (NCP), 40 C.F.R. Section 300.430(e)(9)(iii). The nine criteria and the results of the comparison of the options are presented in this subsection. The nine criteria are as follows:

1. compliance with ARARs
2. overall protection of human health and the environment
3. short-term effectiveness in protecting human health and the environment
4. long-term effectiveness and permanence in protecting human health and the environment
5. reduction of toxicity, mobility, and volume of contaminants
6. technical and administrative feasibility of implementation
7. capital and operation and maintenance costs
8. state acceptance
9. community acceptance

An analysis of the four options in terms of the above criteria follows.

#### 1. Compliance with ARARs

The Burbank OU ROD recognizes that chemical-specific ARARs for the groundwater itself will be addressed in the final remedy. The remedial action adopted pursuant to the ROD, ESD1, and ESD2, is an interim action; therefore, chemical-specific ARARs for the groundwater contaminant plume do not apply to the activities taken pursuant to the ROD, ESD1, and ESD2.

However, for each of the four options being considered, drinking water standards, including state and federal MCLs, source water monitoring protocols, and treatment technology requirements, must be met. The existing treatment plant designed under Phase 1 has been shown to meet these standards during operation at flows up to 6,000 gpm. Option 1 is essentially Phase 1 of the Burbank OU interim remedy, which EPA has previously concluded meets drinking water ARARs.

The Phase 1 Burbank OU treatment plant is currently being operated to meet all standard state drinking water requirements



and several special conditions, as specified in the public water supply operating permit issued to the City of Burbank by the California Department of Health Services (DHS). Since the treatment plant was designed with excess capacity, and can produce up to 9,000 gpm with no loss in treatment efficiency, EPA is confident that Option 2 will also meet drinking water ARARs. Options 3 and 4 would require modification to the treatment plant, but EPA is also confident that such modifications could be performed such that these standards would be met.

The treatment standards applicable to the Burbank OU treatment system were initially established in the ROD. The ROD required that the treatment system meet MCLs for all constituents (other than nitrates). Because water from the Burbank OU treatment system is conveyed offsite for use as a public water supply, and applicable drinking water standards may change, the consent decrees governing operation of the treatment plant recognize that EPA may identify requirements promulgated after the date of the ROD as ARARs in accordance with section 300.430(f)(1)(ii)(B)(1) of the NCP. That section requires attaining (or waiving) requirements promulgated after the date of the ROD where necessary to protect human health or the environment. This ESD does not change the treatment standards for operation of the treatment plant.

With respect to groundwater reinjection, ARARs include the California Regional Water Quality Control Board's (RWQCB) Non-degradation Policy, and Resource Conservation and Recovery Act (RCRA) Section 3020. The only option studied which involves reinjection is Option 4.

Any water reinjected on-site must meet all action-specific ARARs for reinjection. The reinjection must meet the "Statement of Policy With Respect to Maintaining High Quality of Waters in California," which requires that reinjected water not unreasonably degrade existing water quality. Nitrates are of concern with respect to reinjection; to avoid degradation, water from the Burbank OU treatment plant would have to be reinjected into an area of the aquifer containing as high or higher nitrate concentrations.

RCRA Section 3020 provides that the ban on the disposal of hazardous waste into a formation which contains an underground source of drinking water shall not apply to the injection of contaminated groundwater into the aquifer if: (i) such reinjection is part of a response action under CERCLA; (ii) such contaminated groundwater is treated to substantially reduce hazardous constituents prior to such reinjection; and (iii) such response action will, upon completion, be sufficient to protect human health and the environment.

Compliance with reinjection ARARs could be problematic for implementation of Option 4 due to high nitrate levels in the extracted and treated groundwater, and limited areas of the aquifer available for reinjection based on ARARs criteria.

Based on consideration of drinking water ARARs, Options 1, 2, and 3 are considered equivalent. Option 4 is considered less favorable than Options 1-3 due to potential difficulties in meeting reinjection ARARs.

## 2. Overall protection of human health and the environment

Options 1-4 are all protective of human health and the environment. In each case, direct threat of human contact with contaminated groundwater has been minimized. Extracted groundwater is being treated to meet drinking water standards before being served to the public. Therefore, the selection of any of the four options for interim remedial action would result in no change in protection to human health and the environment from that achieved under the interim remedial action established in the ROD and ESD1.

Options 1-4 all inhibit the spreading of the VOC plume to downgradient wellfields, and along with federal and state source water monitoring requirements minimize the likelihood that contaminated water from downgradient wells would be served to the public. As far as the degree of overall containment is concerned, based on studies performed by CH2M Hill and Lockheed, EPA believes that protection of the aquifer is adequate under Options 2, 3, and 4, and may be adequate under Option 1. This issue is discussed further in the section on long-term protectiveness below.

Options 1-4 all protect the environment from contact with contaminated groundwater. Under all four options, extracted groundwater is being treated and used as a public water supply and is not being discharged to the land surface. Option 4 differs from the other three options in that it requires reinjection of excess water. As long as reinjection ARARs are followed, Option 4 will not result in degradation of groundwater quality.

## 3. Short-term effectiveness in protecting human health and the environment

The analysis regarding short-term effectiveness of the Burbank OU interim remedy in protecting human health and the environment does not differ from the above analysis of overall protection of human health and the environment. Options 1-4 are all protective in the short-term. Phase 1 of the Burbank OU project has already been constructed, and treated groundwater is being provided to

the residents of the City of Burbank without negative impact; therefore, Option 1 would not produce additional short-term impacts.

Options 2-4 would require additional construction activity. The only potential additional short-term impact to human health and the environment would be limited to minor, standard, construction concerns such as exposure to wind-blown dust, and noise impacts. The well drilling activities necessitated under these three options would be limited to one to two months in duration, would produce very little airborne dust, and noise would be limited to daytime hours. Option 2 would not produce any other short-term impacts. Options 3 and 4 would require an upgrade of the Burbank OU treatment plant, but this would consist of modifications to an existing plant and would not require significant excavation or earth moving activities, merely the addition or modification of existing physical components to the plant.

EPA believes any construction impacts would be minimal, and that Options 1-4 are all protective of human health and the environment in the short-term.

4. Long-term effectiveness and permanence in protecting human health and the environment

Options 1-4 would all maintain reliable protection of human health and the environment over time. Minor differences arise in the permanence of the various options. Since this is an interim remedial action, and the action itself is not considered permanent, permanence has not been considered a major factor in this evaluation.

However, in ranking the options with respect to permanence, EPA has evaluated to what degree they would contribute to aquifer restoration. Option 2 results in the greatest mass removal of PCE and TCE, suggesting that the combination of pumping rate and location of extraction wells is optimized under this alternative. The other options result in a similar degree of mass removal, with differences of only a few percent. This suggests that the 20 year period of groundwater extraction, which is not changed by this ESD, may be the controlling factor for mass removal. One unknown factor in this analysis is how much mass will continue to enter the groundwater system over the 20 year period of time. The final remedy will attempt to assess this effect and will attempt to address permanence in a more thorough analysis.

A comparison of mass removal for Options 1-4 over 20 years is presented below. These figures derive from an analysis performed by Lockheed Martin Corporation and reviewed by EPA, and EPA's consultant CH2M Hill. (See the Administrative Record: document entitled Evaluation of Extraction Scenarios for the BOU, dated

March 20, 1995, prepared by Hydro-Search, Inc.) The comparison of percent removal uses as a baseline the Burbank OU groundwater plume as defined by the 5 ppb contour line. Percent removal refers to the percentage of the mass within the 5 ppb contour which is removed by the Burbank OU extraction wells over the 20 year projected length of the interim remedy.

As noted, the amount of mass removed is greater at a 9,000 gpm extraction rate (Option 2) than at a 12,000 gpm extraction rate (Option 4). This is due to the need to meet reinjection ARARs for nitrates under Option 4. The locations where reinjection wells may be placed to meet ARARs are not favorable for mass removal, because under Option 4, the treated water must be reinjected in an area close to the extraction wells. The reinjected water actually displaces and dilutes contaminated water such that overall removal efficiency for TCE and PCE decreases.

Table 1 - Mass Removal Over Twenty Years

	% mass PCE removed	% mass TCE removed
Option 1 <sup>1</sup>	89	73
Option 2 <sup>2</sup>	92	78
Option 3 <sup>3</sup>	91	78
Option 4 <sup>4</sup>	88	75

The only other long-term protectiveness issue relates to air emissions from the Burbank OU treatment plant. The off-gas from the plant's aeration towers contains TCE and PCE molecules which have been stripped from the groundwater. Although this off-gas is treated with the use of air-phase granular activated carbon, a small quantity of TCE and PCE (less than 1% of the total present in the off-gas) is released to the atmosphere at an elevation of approximately sixty feet above the ground surface. The South Coast Air Quality Management District has reviewed the emission levels and found them well within ARARs for air emissions. EPA believes that emissions from Options 1-4 will not negatively impact human health and the environment, due to the low level of emissions, and due to their emission at a significant height above ground surface, away from people.

---

<sup>1</sup>6,000 gpm pumping rate, no reinjection

<sup>2</sup>9,000 gpm pumping rate, no reinjection

<sup>3</sup>12,000 gpm pumping rate, no reinjection

<sup>4</sup>12,000 gpm pumping rate, with reinjection

Nonetheless, Options 1-4 can be ranked in terms of overall emissions. The lower the groundwater extraction rate, the lower the rate of TCE and PCE removal, and the lower the rate of TCE and PCE emissions. Option 1 at a groundwater extraction rate of 6,000 gpm results in the least air emissions. Option 2 performs the next best in this respect. Options 3 and 4 result in slightly higher emissions.

5. Reduction of toxicity, mobility, and volume of contaminants

As stated above, EPA has evaluated to what degree the four options will contribute to mass removal. Mass removal of contaminants relates very closely to reduction in toxicity and volume of contaminants in the groundwater. Based on EPA's evaluation, all four options would result in similar degrees of reduction in toxicity and volume.

An assessment has also been made regarding the degree of hydraulic control Options 1-4 would exert over the groundwater contamination (Evaluation of Extraction Scenarios for the BOU, dated March 20, 1995, prepared by Hydro-Search). The degree of hydraulic control achieved relates very closely to reduction in mobility of the contaminants. The following comparison of hydraulic control is made based upon the groundwater plume as defined by the 5 ppb contour line (percent control refers to the percentage of the area within the 5 ppb contour which is contained, i.e. which does not move downgradient):

Table 2 - Hydraulic Control Over Twenty Years

	% control PCE	% control TCE
Option 1 <sup>5</sup>	66	51
Option 2 <sup>6</sup>	72	60
Option 3 <sup>7</sup>	74	68
Option 4 <sup>8</sup>	71	58

Based on this analysis, Option 3 would result in the greatest reduction in mobility, particularly with respect to control of the TCE plume. Options 2, 3, and 4 control to a similar degree the PCE plume. Option 1 clearly results in a lesser degree of

<sup>5</sup>6,000 gpm pumping rate, no reinjection

<sup>6</sup>9,000 gpm pumping rate, no reinjection

<sup>7</sup>12,000 gpm pumping rate, no reinjection

<sup>8</sup>12,000 gpm pumping rate, with reinjection

control. Option 3 turns out to be more efficient than Option 4, despite the fact that these options use the same pumping rate of 12,000 gpm, because based on current projections nitrate levels in the aquifer will not accommodate reinjection in hydraulically advantageous locations. A hydraulically advantageous location would be one where the reinjected water would assist in plume containment. ARARs requirements would restrict the placement of reinjection wells in areas where groundwater quality would not be degraded, meaning in areas where nitrates in groundwater are higher than nitrates in the water to be reinjected. If reinjection wells could be placed in the most hydraulically advantageous locations, Option 4 would be slightly superior to Option 3 in this regard.

When the interim remedial action is complete, EPA projects that contamination will remain in the groundwater under each of the four options. The final remedial action will determine how to address this remaining contamination.

Based on current data, Options 2 and 3 appear superior in terms of this criterion, but all options fulfill the goal of the ROD to partially control the movement and spread of groundwater contaminants in the Burbank OU area, while contributing to aquifer restoration.

#### 6. Technical and administrative feasibility of implementation

The technical differences between the four options are as follows:

Option 1 would require no additional construction. (Option 1 has already been implemented as Phase 1 of the interim remedy; therefore, it has been proven feasible.)

Option 2 would require construction of 3,000 gpm of additional extraction wellfield capacity.

Option 3 would require construction of 6,000 gpm of additional extraction wellfield capacity, plus a 3,000 gpm upgrade to treatment facility capacity.

Option 4 would require construction of 6,000 gpm of additional extraction wellfield capacity, plus a 3,000 gpm upgrade to treatment facility capacity, plus construction of a 8,500 gpm reinjection wellfield.

In general, technical implementability increases in complexity as construction tasks are added to a project. Some construction tasks are more complex than others; for example, construction of a reinjection wellfield is more complicated than construction of an extraction wellfield due to more complex well specifications

intended to reduce clogging of the well screens. Using this rationale, Option 4 is more complex than Option 3, which is more complex than Option 2, which is more complex than Option 1. As stated above, Option 1 has already been implemented technically (as well as administratively).

Ease of operation also factors into implementability. Application of proven technology generally reduces uncertainty of implementability, while application of a new technology increases uncertainty. Options 1, 2, and 3 all use common technology, while Option 4, by adding reinjection, uses a technology that has not been implemented widely in the geographic region of the Burbank OU.

Administratively, Options 1, 2, and 3, would be relatively simple because they would follow the framework developed during start-up of Phase 1 of the Burbank OU interim remedy. As part of Phase 1 start-up, EPA, the City of Burbank, Lockheed Martin Corporation, and DHS reached agreement on operational plans for the facility. Once again, Option 1, since it has been constructed and placed in operation, is not expected to present any administrative difficulties.

Construction of additional facilities, which would be necessary under Options 2, 3, and 4, would require amending the City of Burbank's public water supply operating permit, issued by DHS. Although this would be an additional administrative task, EPA is confident that additional permit conditions required by virtue of the addition of such facilities, would be achievable.

Option 3 would have the administrative complication of committing additional purveyors to accept water the City of Burbank could not accept. It is not likely that these additional purveyors would be willing to sign a consent decree, the chosen implementation document for the interim remedy. Lockheed Martin Corporation and the City of Burbank have both attempted, without success as of the date of this ESD2, to obtain the commitment of other local purveyors to accept Burbank OU water. Without this commitment, there is a good deal of uncertainty whether 12,000 gpm of groundwater could be purveyed on a routine basis, during periods when the City of Burbank could not accept the entire production of the Burbank OU facilities.

Option 4 would be more complicated to implement administratively due to the likely increased involvement of a regulatory agency, RWQCB, in the process. RWQCB has previously expressed reservations about reinjection based on water quality degradation concerns. However, EPA believes this additional administrative step would not present a barrier to implementation.

Based on technical and administrative considerations, Options 1 and 2 are considered superior. Options 3 and 4 have administrative complications, which would need to be resolved prior to implementation. Option 3 may present a barrier to implementation while Option 4 probably does not.

#### 7. Capital and operation and maintenance costs

The following discussion compares the costs of Options 1-4 on a net present value basis. Costs include construction and 20 years of operation and maintenance. These costs are not based on the original estimates set forth in the ROD and in ESD1, but are based on more recent estimates prepared by a consultant to Lockheed Martin Corporation, the entity which has undertaken design and construction of the interim remedy under EPA oversight. (See the Administrative Record: document entitled Burbank Operable Unit Costs Comparison Summary, dated March 20, 1995, prepared by Parks, Palmer, Turner & Yemenidjian.) These estimates were independently reviewed by CH2M Hill, EPA's ARCS contractor. Therefore, the actual cost of the Phase 1 Burbank OU treatment facilities constructed by Lockheed Martin, the City of Burbank, and six other businesses, has been incorporated into these estimates. CH2M Hill's analysis is presented in a memorandum entitled Review of Burbank Operable Unit Costs Comparison Summary, dated November 11, 1996. EPA has concluded that the cost estimates prepared by Lockheed Martin used appropriate assumptions and are therefore appropriate for purposes of comparison of alternatives.

Option 1 is the least expensive of the four options. The capital cost for this option is estimated at \$31 million in 1996 dollars. The present value of the 20 years of operation and maintenance is estimated at \$88 million. Therefore, the total net present value of Option 1 is estimated at \$119 million. Economic assumptions used by Lockheed Martin's consultant in this analysis are as follows: a discount rate of 8% was used; an inflation rate of 3% was used; calculations are in 1995 dollars.

Option 2 is more expensive than Option 1 but less expensive than Option 3. The capital cost for this option is estimated at \$38 million in 1996 dollars. The present value of 20 years of operation and maintenance is estimated at \$93 million. Therefore, the total net present value for Option 2 is estimated at \$131 million.

Option 3 is more expensive than option 2 but less expensive than Option 4. The capital cost for this option is estimated at \$49 million in 1996 dollars. The present value of 20 years of operation and maintenance is estimated at \$97 million. Therefore, the total net present value for Option 3 is estimated at \$146 million.



Option 4 is the most expensive of the four options. The capital cost for this option is estimated at \$70 million in 1996 dollars. The present value of 20 years of operation and maintenance is estimated at \$110 million. Therefore, the total net present value for Option 4 is estimated at \$180 million.

For purposes of comparison, this information is set out in the following table:

Table 3 - Cost Comparison

<u>Option</u>	<u>Capital</u>	<u>O&amp;M</u>	<u>Total</u>
1 <sup>9</sup>	\$31 million	\$ 88 million	\$119 million
2 <sup>10</sup>	\$38 million	\$ 93 million	\$131 million
3 <sup>11</sup>	\$49 million	\$ 97 million	\$146 million
4 <sup>12</sup>	\$70 million	\$110 million	\$180 million

#### 8. State acceptance

EPA has coordinated with state agencies throughout this project, specifically RWQCB, the California Department of Toxic Substances Control (DTSC), and DHS. These agencies either accepted, or did not object to, the interim remedy originally designated by the ROD and ESD1. The Administrative Record details the communications between EPA and these State agencies throughout the interim remedy selection process.

Regarding the remedy discussed in the ROD and ESD1, the record reflects that the RWQCB supports the use of the treated water as drinking water, provided that all requirements for the serving of public drinking water are met. RWQCB agrees that reinjection may be implemented as long as compliance is achieved with respect to the "Statement of Policy With Respect to Maintaining High Quality Waters in California." (See the Administrative Record: letter dated June 8, 1990, from Hank Yacoub, RWQCB, to Alisa Greene, EPA; letter dated June 20, 1990, from Robert Ghirelli, RWQCB, to Alisa Greene, EPA.)

The record reflects that neither DTSC nor DHS stated a preference or rejection of any of the options presented in the ROD and ESD1. (See the Administrative Record: letter dated May 15, 1990, from

---

<sup>9</sup>6,000 gpm pumping rate, no reinjection

<sup>10</sup>9,000 gpm pumping rate, no reinjection

<sup>11</sup>12,000 gpm pumping rate, no reinjection

<sup>12</sup>12,000 gpm pumping rate, with reinjection

Hamid Saebfar, DTSC, to Alisa Greene, EPA, and letter dated June 11, 1990, from Gary Yamamoto, DHS, to Alisa Greene, EPA.)

In addition to reviewing the Administrative Record through the ROD and ESD1, EPA notified the state agencies regarding the proposed changes which would be made by ESD2. Neither RWQCB nor DTSC provided written comments on the options presented in ESD2. However, as stated above, EPA also has presented EPA's position on the ESD2 options to the state and other agencies at quarterly Management Committee meetings. EPA's understanding based on exchanges with representatives from these agencies is that neither RWQCB nor DTSC objects to EPA's approach.

DHS did provide written comments on the changes proposed by ESD2, but did not state a preference for any of the options presented herein. (See the Administrative Record: letter dated September 6, 1996, from Gary Yamamoto, DHS, to David Seter, EPA.) DHS raised the issue that "limiting the pumping rate to a maximum of 9,000 gpm and the elimination of the re-injection option may limit U.S. EPA's future success in containing the contaminant plume." In response to this comment, EPA believes the analysis presented in this ESD2, in terms of the nine NCP criteria, thoroughly considers the impact of the various options including the impact on plume containment.

Specifically, the nitrate levels currently projected in the aquifer do not accommodate reinjection in hydraulically advantageous locations. The City of Burbank has already agreed to maximize its use of treated groundwater, which will be an average of 9,000 gpm. An extraction rate of 9,000 gpm without reinjection thus accomplishes better hydraulic control than an extraction rate of 12,000 gpm with reinjection.

#### 9. Community acceptance

The basic groundwater extraction and treatment concepts being evaluated in ESD2 do not differ greatly from the concepts evaluated in the ROD and in ESD1. The same degree of treatment will be applied to water made available as a public water supply. During the thirty day comment period provided for by EPA during the development of ESD1, there were no comments submitted by the public.

In addition, EPA will publish notice of availability of this ESD2 in a local newspaper of general circulation, and will consider any comments submitted by the public as required by 40 C.F.R. Section 300.825(c).

## D. Decision on options

Based on the above analysis of Options 1-4, EPA has chosen Option 2, which consists of groundwater extraction at an average rate of 9,000 gpm, treatment by air stripping and granular activated carbon to remove VOCs, nitrate reduction by blending with a low nitrate water source, and use of the treated and blended water by the City of Burbank as a public water supply.

Option 2 was chosen because:

- 1) it performs equally as well as Options 3 and 4 and better than Option 1 at removing contaminant mass over a 20 year period of time;
- 2) it performs substantially as well as Option 3 and better than Options 1 and 4 at retarding migration of the groundwater contamination plume;
- 3) its total implementation cost is  
    \$15 million less than Option 3  
    \$49 million less than Option 4;
- 4) it avoids the potential administrative difficulties of Options 3 (identifying additional water purveyors) and 4 (resolving reinjection regulatory issues);
- 5) it complies with ARARs;
- 6) it is protective of human health and the environment.

This is an interim remedy. In the future, after the Burbank OU facilities have been operational for a substantial period of time, the optimal extraction rate may be better determined. This information will eventually factor into a decision on the final remedy. But for the purposes of ESD2, the data suggest that a groundwater extraction rate of 6,000 gpm may be too low to meet the groundwater containment objective. However, the data do not justify the added expense of raising pumping to a rate of 12,000 gpm. EPA has concluded that the Option 2 rate of 9,000 gpm is a reasonable, efficient, and cost-effective solution.

Although under ideal conditions pumping 12,000 gpm would provide greater containment than pumping 9,000 gpm, the reality of the ground water system as it exists in Burbank presents certain limitations. Under ideal conditions, nitrate levels would be low enough to meet ARARS reinjection requirements in areas determined to be hydraulically advantageous to reinjection. This is not the case, and is not likely to be the case throughout the time frame for implementation of the interim remedy. Because reinjection must take place in hydraulically disadvantageous locations, the effectiveness of Option 4 is lessened.

The Option 2 pumping rate is 9,000 gpm, which represents a 25% reduction in pumping versus Options 3 and 4. Yet, according to analyses performed by Lockheed Martin with which EPA concurs,

Option 2 is superior in containment to Option 4 and provides only slightly less containment than Option 3.<sup>13</sup> Furthermore, cost savings for Option 2 are significant (a savings of 27% versus Option 4).

Although additional cost savings are projected from further reducing the pumping rate to 6,000 gpm (Option 1), EPA believes that, should water levels increase in the aquifer system, capture could fall below acceptable levels under this option. As long as 9,000 gpm can be extracted and used without being wasted or reinjected, EPA concludes that Option 2 presents the best balance of reducing mobility of contaminants and cost-effectiveness.

As described above, EPA has also concluded that, for the purposes of long-term containment, groundwater extraction need not equal 9,000 gallons per minute each day. This is why EPA has set a goal of 9,000 gallons per minute as an annual average instead of an instantaneous average. EPA also believes its approach of allowing reduced groundwater extraction during periods of high nitrate concentration increases protectiveness to public health without adversely affecting long-term containment.

#### V. Support Agency Comments

The State of California agencies discussed in Section IV.C.8. above are the support agencies for this action. Their comments are addressed in that section.

#### VI. Summary of Selected Remedy

The interim remedy for the Burbank Operable Unit, as selected in the ROD and as modified by ESD1 and ESD2, consists of groundwater extraction at an average rate of 9,000 gpm, treatment by air stripping and granular activated carbon to remove VOCs, nitrate reduction by blending with a low nitrate water source, and use of the treated and blended water by the City of Burbank as a public water supply.

#### VII. Statutory Determinations

Considering the new information that has been developed, the EPA believes that the interim remedy as modified by ESD2 remains

---

<sup>13</sup>This comparison was made based upon the degree of hydraulic control exerted by the various options on the TCE/PCE groundwater plume.

protective of human health and the environment, complies with federal and state requirements that are applicable or relevant and appropriate to this interim remedial action, and is cost effective. In addition, this remedy satisfies the statutory preference for remedies that employ treatment which permanently and significantly reduces the volume, toxicity or mobility of the hazardous substances as a principal element. It also complies with the statutory preference for remedies that utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable. The changes and clarifications contained in ESD2 are significant but do not fundamentally change the remedy. They do not change the decision to conduct an interim pump and treat action to inhibit the spreading of the contaminated groundwater plume and to begin aquifer restoration. They also do not alter the technologies used in the interim remedy.

#### VIII. Public Participation Activities

EPA has presented these changes to the remedy in the form of an Explanation of Significant Differences because the changes are of a significant, but not fundamental, nature. The basic groundwater extraction and treatment concepts being evaluated in ESD2 do not differ greatly from the concepts evaluated in the ROD and in ESD1. ESD2 and underlying information have been added to the Burbank OU Administrative Record. Additional provisions for public comment are not required for an ESD (see 40 C.F.R. Section 300.435(c)(2)(i)), and EPA is not providing a formal public comment period for ESD2. However, EPA has published notice of the availability of ESD2 in a local newspaper as required by 40 C.F.R. Section 300.435(c)(2)(i)(B), and per 40 C.F.R. Section 300.825, will consider any significant comments submitted in a timely manner.

# **APPENDIX V**

**Appendix 5**  
**Statement of Work**

BURBANK OPERABLE UNIT  
SECOND STAGE STATEMENT OF WORK  
(LONG TERM O&M)

I. General Provisions

A. Definitions: All words, as defined in the Consent Decree, have the same meaning when used herein.

B. Warranty: EPA has exercised its best efforts to include in this Statement of Work all activities necessary to fulfill Operation and Maintenance requirements for the Burbank Operable Unit. However, the settling parties acknowledge and agree that nothing in this Statement of Work or any deliverable approved by EPA pursuant hereto constitutes a warranty or representation, either express or implied, by the United States that compliance with this document and/or deliverables approved pursuant to this document will result in the achievement of the Performance Standards that the Settling Work Defendant is required to meet under the Consent Decree. Nothing in this Statement of Work or in deliverables approved pursuant hereto shall be deemed to limit EPA's rights pursuant to Subpart D (General Reservation of Rights) of Section XXII of the Consent Decree.



C. EPA Approval: EPA approval of any submittal by a Settling Defendant within the context of this Consent Decree, including but not limited to plans, specifications, and reports, is administrative in nature and designed to permit the Settling Defendants to proceed with the deliverables. The Settling Defendants acknowledge and agree that EPA's approval of deliverables does not constitute a warranty or representation, as discussed in Paragraph B above.

## II. Schedule

A. Dates: The schedule of deliverables for this Statement of Work is presented in Attachment 1 and shall be referred to as the Work Schedule. In the Work Schedule, EPA has provided an approximation of its review time; however, failure to review a deliverable within the estimated time shall not constitute a violation of the Consent Decree by the United States. Settling Defendants are required to submit deliverables within the time periods stated, and failure to do so constitutes a violation of the Consent Decree. See Consent Decree, Section XII (Submissions Requiring Agency Approval).

### B. Items Triggered by Date of Entry of Consent Decree:

1. Designation of Project Coordinator: Pursuant to Section XIII (Project Coordinators) of the Consent Decree, within

30 days of the date of entry of the Consent Decree, the Settling Work Defendant (City of Burbank), Lockheed Martin, the UAO Parties, and EPA shall submit to one another, in writing, the name, title, and qualifications of their proposed respective Project Coordinators and Alternate Project Coordinators. The coordinators for the Settling Defendants may be members of the Settling Defendants' staff or an independent contractor.

2. Designation and Review of Supervising Contractor: Pursuant to Section VI (Performance of the Work) of the Consent Decree, within 180 days of the date of entry of the Consent Decree, the Settling Work Defendant shall notify EPA and the State in writing of the name, title, and qualifications of its proposed Supervising Contractor. Prior to this date, the Settling Work Defendant may submit to EPA and the State a list of contractors for pre-qualification. It is the Settling Work Defendant's responsibility to provide any pre-qualification information to EPA and the State in a time frame that allows for timely designation of the Supervising Contractor. The Supervising Contractor may come from within the ranks of the Settling Work Defendant's staff. The factors to be considered in approving or disapproving the Supervising Contractor shall include: professional and ethical reputation; professional

registration; demonstrated project management experience; experience and qualifications in the field of water treatment and supply; sufficient capacity (professional, technical and support staff) to accomplish the project tasks according to the Work Schedule; and sufficient business background and financial resources to provide uninterrupted services throughout the life of the project. Upon its approval of the Supervising Contractor, EPA will issue an authorization to proceed.

3. Progress Reports: These reports shall be prepared by the Settling Work Defendant pursuant to Section XI (Reporting Requirements) of the Consent Decree. The schedule for submittal of progress reports is summarized in Attachment 2 and shall be referred to as the Reporting Schedule. Progress Reports shall include at a minimum:

a. A brief narrative describing any noteworthy accomplishments or problems encountered at the Plant Facilities during the reporting period (including but not limited to: the implementation of process improvements; non-routine maintenance; and a summary of any violations of the Consent Decree, the cause of such violations, and the steps being taken to avoid future violations);

b. Status of expenditures in comparison to the

Annual Budget;

c. The quantity of water pumped by each Burbank OU extraction well, and each GAC Wellfield extraction well;

d. A daily summary of water production broken down into categories of: Burbank OU Treatment Plant; GAC Wellfield; Blending Water; and Total Production;

e. A compliance calculation of the project's water budget showing whether the 9,000 gpm average groundwater extraction rate is being met; and specifically, the status of the Cumulative Pumping Credit for the reporting period, including designation of any days on which the Cumulative Pumping Credit fell below zero gallons;

f. Copies or summaries of compliance data submitted by the Settling Work Defendant to the California Department of Health Services;

g. Status of Maintenance Credits; and

h. Report of nitrate levels in: the extracted groundwater; the blending water; and the product water.

4. Second Stage O&M Work Plan: Pursuant to Section VI (Performance of the Work) of the Consent Decree, the Settling Work Defendant shall submit, within one year of the date of entry of the Consent Decree, the Second Stage O&M Work Plan. The

Second Stage O&M Work Plan shall incorporate Operation and Maintenance activities to be performed on all portions of the Plant Facilities to ensure that the facilities continue to run according to specification. The Second Stage O&M Work Plan shall include: a detailed description, including drawings, of the Plant Facilities; manufacturer specifications for the Plant Facilities and equipment; easily understood, stepwise standard operating procedures for the Plant Facilities at all foreseeable flow rates; startup and shutdown procedures for all facilities, including emergency shutdown procedures; a detailed description of manual and electronic control systems; and any other elements pertaining to efficient and safe operation of the Plant Facilities. The Second Stage O&M Work Plan shall describe in detail: the routine maintenance activities to be performed on each element of the Plant Facilities; a schedule for these routine maintenance activities; a schedule of visual inspection of the Plant Facilities; a schedule of equipment overhauling per manufacturers specifications; a description and schedule of cleaning and backflushing; detailed chemical handling procedures; and any other elements pertaining to efficient and safe maintenance of the Plant Facilities. The Second Stage O&M Work Plan shall incorporate by reference the Staffing Plan, Health and

Safety Plan, Operational Sampling Plan, and Contingency Plan.

The Second Stage O&M Work Plan in conjunction with the Staffing Plan shall delineate clear lines of responsibility for performing the activities referenced within the plan, designating which activities are the responsibility of the O&M Contractor, especially with respect to emergency shutdown and implementation of the Contingency Plan if it becomes necessary.

5. Staffing Plan: Pursuant to Section VI

(Performance of the Work) of the Consent Decree, the Settling Work Defendant shall submit, within one year of the date of entry of the Consent Decree, the Staffing Plan. The Staffing Plan shall identify the supervisory chain of command for the project; shall provide an organizational chart identifying specific individuals in the chain of command where possible; and shall define the roles of the Settling Work Defendant, the Supervising Contractor, and the O&M Contractor. The position of the Settling Work Defendant's Project Coordinator in the chain of command shall be made clear. The plan shall also estimate staffing levels required to implement the O&M activities, including the levels of expertise required.

6. Time Line and Schedule: Pursuant to Section VI

(Performance of the Work) of the Consent Decree, the Settling

Work Defendant shall submit, within one year of the date of entry of the Consent Decree, the Time Line and Schedule. The Time Line and Schedule shall list the major milestones to be accomplished in order for the Settling Work Defendant to efficiently assume long term Operation and Maintenance of the Plant Facilities. It shall include the items listed in the Work Schedule, and also intermediate milestone activities such as: the Settling Work Defendant's projected bidding schedule for hiring the O&M Contractor; the schedule for transition of O&M Activities as agreed upon by Lockheed Martin and the Settling Work Defendant; and any other items relevant to orderly implementation of O&M Activities. The identification of intermediate milestones, which are defined as those milestones not specified in the Work Schedule, is solely for planning purposes. Any failure by the Settling Work Defendant to meet the Time Line's intermediate milestones shall not be deemed a violation of the Consent Decree.

7. Quality Assurance Project Plan: Pursuant to Section IX (Quality Assurance, Sampling, and Data Analysis), the Settling Work Defendant shall prepare and submit a Quality Assurance Project Plan addressing analytical and data quality methods and objectives to be applied in support of Operation and Maintenance Activities. The Quality Assurance Project Plan shall

be submitted to EPA and the State for review within eighteen months of the date of entry of the Consent Decree. Addenda to the Quality Assurance Project Plan shall be prepared by the Settling Work Defendant on an as-needed basis to reflect major changes in analytical methods.

8. Operational Sampling Plan: In conjunction with the Quality Assurance Project Plan, the Settling Work Defendant shall submit, within eighteen months of the date of entry of the Consent Decree, an Operational Sampling Plan which defines the data gathering methods and schedules to be used in performing the sampling and analytical portion of the Operation and Maintenance activities. At a minimum, the Operational Sampling Plan shall address sampling of water treatment system influent and effluent, airborne discharges, and any hazardous materials generated at the Plant Facilities. The monitoring requirements of the domestic water supply permit as issued and amended by the California Department of Health Services shall be incorporated into the Operational Sampling Plan.

9. Health and Safety Plan: The Settling Work Defendant shall submit, within eighteen months of the date of entry of the Consent Decree, a Health and Safety Plan which describes the minimum health, safety, and emergency response



requirements for the Operation and Maintenance activities to be undertaken by the Settling Work Defendant, the Supervising Contractor, and/or the O&M Contractor. The plan shall be prepared in accordance with U.S. Occupational Health and Safety Administration ("OSHA") requirements and any other applicable requirements.

10. Contingency Plan: The Settling Work Defendant shall submit, within eighteen months of the date of entry of the Consent Decree, a Contingency Plan which is written for the local affected population in the event of an accident or emergency at the Site. It shall incorporate an Air Monitoring Plan and a Spill Control and Countermeasures Plan. The following is a suggested list of items that shall be included in the Contingency Plan:

a. Name of the person responsible for responding in the event of an emergency incident;

b. List of key contacts in the local community with phone numbers and addresses and the State and Federal agencies to be involved in the cleanup, as well as local emergency squads and hospitals;

c. First aid and medical information, including names of personnel trained in first aid, a clearly marked map

with the location of medical facilities and all necessary emergency phone numbers for fire, rescue, and local hazardous material teams;

d. An air monitoring plan to assure that the VOC treatment system is meeting the requirements of the South Coast Air Quality Management District. Air monitoring may include personnel monitoring, on-site and/or off-site area monitoring. Trigger concentrations to implement the Contingency Plan shall be specified; and

e. A Spill Control and Countermeasures Plan which shall specify actions to be taken in the event of spills from material handling and/or transportation. The plan shall describe methods, means and facilities required to prevent contamination of soil; water; atmosphere; uncontaminated structures, equipment, or material. It shall specify provisions for equipment and personnel to perform emergency measures required to contain any spillage; to remove and properly dispose of any material that becomes contaminated due to spills; and to decontaminate structure, equipment, or material.

C. Items Triggered by Phase 2 System Operation Date:

1. Designation of O&M Contractor: Pursuant to Section VI (Performance of the Work) of the Consent Decree,

within six months after the Phase 2 System Operation Date, the Settling Work Defendant shall submit to EPA and the State in writing the name, title, and qualifications of its proposed O&M Contractor. Prior to this date, the Settling Work Defendant may submit to EPA and the State a list of contractors for pre-qualification. It is the Settling Work Defendant's responsibility to provide any pre-qualification information to EPA and the State in a time frame that allows for timely designation of the O&M Contractor. The factors to be considered in approving or disapproving the O&M Contractor shall include: professional and ethical reputation; professional certification and/or registration; demonstrated experience in the field of water treatment; ability to meet the requirements of the Staffing Plan to accomplish the O&M tasks in accordance with the Second Stage O&M Work Plan; sufficient business background and financial resources to provide uninterrupted services throughout the life of the project; and ability to provide insurance. Upon its approval of the O&M Contractor, EPA will issue an authorization to proceed.

2. Transition Activities: Commencing no later than one year after the Phase 2 System Operation Date, the Settling Work Defendant and Lockheed Martin shall jointly plan a series of

transition activities under which the Settling Work Defendant shall assume Operation and Maintenance of all Plant Facilities. The Settling Work Defendant shall assume Operation and Maintenance of all Plant Facilities on the Date of Commencement, which will occur approximately two years after the Phase 2 System Operation Date.<sup>1</sup>

D. Other Items:

1. Selection of Cost Consultant: Pursuant to Section XIV (Funding of Response Activities) of the Consent Decree, by January 1, 1999, Lockheed Martin and the Settling Work Defendant shall jointly notify EPA in writing of the name, title, and qualifications of the proposed Cost Consultant. Prior to this date, Lockheed Martin and the Settling Work Defendant may submit to EPA a list of consultants for pre-qualification. It is the joint responsibility of Lockheed Martin and the Settling Work Defendant to provide any pre-qualification information to EPA in a time frame that allows for timely designation of the Cost Consultant. The factors to be considered in approving or disapproving the Cost Consultant shall be based on: professional and ethical reputation; professional certification; experience in

---

<sup>1</sup>See Consent Decree for further detail.

the type of cost estimating and budgeting activities to be performed; sufficient capacity (professional, technical and support staff) to accomplish the project tasks according to the Work Schedule; and sufficient business background and financial resources to provide uninterrupted services.

2. Deliverables: The Settling Work Defendant shall submit three copies of each deliverable identified in the Work Schedule to the EPA Project Coordinator.

3. Final Inspection: At the end of the time period for which the Settling Work Defendant is required to perform O&M Activities pursuant to the Consent Decree, EPA shall conduct a final review of records and inspection of the Plant Facilities. The inspection shall be a necessary part of approving or disapproving the Certificate of Completion pursuant to Section XV (Certificate of Completion) of the Consent Decree.

4. Determination of Decommissioning/Dismantling of Plant Facilities: In conjunction with the process of reviewing the Certificate of Completion for the Burbank OU Interim Remedial Action, EPA will make a determination as to whether all or a portion of the Plant Facilities shall be decommissioned/dismantled. At least ninety days prior to the date that the Settling Work Defendant anticipates that the Work will have been

fully performed, the Settling Work Defendant and the Settling Defendants may voice their respective opinions to EPA on whether all or a portion of the Plant Facilities shall be decommissioned/dismantled. In order to facilitate this process, the Settling Work Defendant shall notify the Project Coordinators for the Settling Defendants at least ninety days prior to the date that the Settling Work Defendant anticipates that the Work will have been fully performed, that a written request for Certification of Completion has been submitted to EPA.

### III. Operational Compliance Determinations

A. Period of Operation and Maintenance: The Settling Work Defendant shall perform Operation and Maintenance Activities on the Plant Facilities as required under Section VI (Performance of the Work) of the Consent Decree, for a period of eighteen years. This period of Operation and Maintenance shall commence on the Date of Commencement, which will occur approximately two years after the Phase 2 System Operation Date.<sup>2</sup>

B. Cumulative Pumping Credit: If the quantity of groundwater extracted as part of the Burbank OU Interim Remedy exceeds the requirements of the First and Second Consent Decrees,

---

<sup>2</sup>See Consent Decree for further detail.

then the excess quantity shall accumulate as a credit. This credit will be measured in units of gallons and will be known as the Cumulative Pumping Credit. The credit will accumulate and "carry over" from day to day and from year to year, and will be used for compliance determination purposes, as described below.

1. Status on the Date of Commencement: On the Date of Commencement, the Cumulative Pumping Credit that has been accumulated throughout Phase 1 and Phase 2 up to the Date of Commencement shall be credited in full to the Settling Work Defendant. Should the Cumulative Pumping Credit be a negative number upon assumption of O&M Activities by the Settling Work Defendant, the credit will be reset to zero on the Date of Commencement.

2. Additions to and Subtractions from the Cumulative Pumping Credit: On each non-Maintenance Day, beginning on the Date of Commencement, the sum of the amount of groundwater, in gallons, pumped from the Burbank OU Extraction Wellfield and the City of Burbank GAC Wellfield shall be compared with the amount, in gallons, required under Section VI (Performance of the Work) of the Consent Decree. For the purposes of making this comparison, the amount of pumpage, in gallons, required under the Consent Decree shall be the same each day and shall be calculated

as follows:

$$(9,000 \text{ gallons/minute}) \times (60 \text{ minutes/hour}) \times (24 \text{ hours/day}) = 12,960,000 \text{ gallons/day}$$

a. On each day when in excess of 12,960,000 gallons is pumped from a combination of the Burbank OU Extraction Wellfield and the City of Burbank GAC Wellfield, that excess amount will be added to the Cumulative Pumping Credit as follows:

$$PC' = PC + (GPBOU + GPGAC - 12,960,000)$$

where

PC' = new Cumulative Pumping Credit (gallons)

PC = old Cumulative Pumping Credit (gallons)

GPBOU = number of gallons pumped for the day from the  
Burbank Operable Unit wellfield

GPGAC = number of gallons pumped for the day from the City  
of Burbank GAC Wellfield

b. On days when less than a total of 12,960,000 gallons is pumped from a combination of the Burbank OU Extraction Wellfield and the City of Burbank GAC Wellfield, except on high nitrate days (see Section III.B.4. below), the difference between 12,960,000 gallons and the amount actually pumped will be



deducted from the Cumulative Pumping Credit as follows:

$$PC' = PC - (12,960,000 - GPBOU - GPGAC)$$

Where

PC' = new Cumulative Pumping Credit (gallons)

PC = old Cumulative Pumping Credit (gallons)

GPBOU = number of gallons pumped for the day from the  
Burbank Operable Unit wellfield

GPGAC = number of gallons pumped for the day from the City  
of Burbank GAC Wellfield

3. Effect of Maintenance Days on the Cumulative Pumping Credit: On each day which the Settling Work Defendant designates as a Maintenance Day (which need not be a full day, but may be a portion of a day), if the amount of groundwater pumped for the day exceeds 12,960,000 gallons, the amount in excess of 12,960,000 gallons shall be added to the Cumulative Pumping Credit according to Section III.B.2.a., but the Cumulative Maintenance Credit (see Section III.C. below) shall not change.

If the amount of groundwater pumped by the Settling Work Defendant on the designated Maintenance Day is less than

12,960,000 gallons, the Cumulative Pumping Credit shall not change, but the Cumulative Maintenance Credit will decrease as follows:

$$MC' = MC - (12,960,000 - GPBOU - GPGAC)$$

where

MC' = new Cumulative Maintenance Credit

MC = old Cumulative Maintenance Credit

GPBOU = number of gallons pumped for the day from the  
Burbank Operable Unit extraction wellfield

GPGAC = number of gallons pumped for the day from the City  
of Burbank GAC Wellfield

4. Effect of High Nitrate Days on the Cumulative Pumping Credit: A High Nitrate Day is defined as a day on which nitrate levels in groundwater pumped from the Burbank OU Extraction Wellfield (as measured at or near the Point of Delivery) are equal to or greater than 50 milligrams per liter as nitrate. On each High Nitrate Day when the quantity of groundwater pumped from a combination of the Burbank OU Extraction Wellfield and the City of Burbank GAC Wellfield exceeds 12,960,000 gallons, that excess amount shall be added to

the Cumulative Pumping Credit according to Section III.B.2.a.

On each High Nitrate Day when the quantity of groundwater pumped from a combination of the Burbank OU Extraction Wellfield and the City of Burbank GAC Wellfield falls below 12,960,000 gallons (due to high nitrate concentrations and not for other reasons, e.g. maintenance), the Cumulative Pumping Credit shall increase according to the following formula:

$$PC' = PC + I$$

where

PC' = new Cumulative Pumping Credit

PC = old Cumulative Pumping Credit

I = increase to the pumping credit (I will be set to zero should the following calculation yield a negative number)

and

$$I = CWD - 12,960,000$$

where

CWD = actual metered City Water Demand on the High Nitrate Day

##### 5. Determining Compliance using the Cumulative

Pumping Credit: The Cumulative Pumping Credit shall be used to determine whether the Settling Work Defendant is meeting the groundwater extraction requirements under Section VI (Performance of the Work) of the Consent Decree. On a date one year following the Date of Commencement, the initial pumping compliance determination shall be made.

If the Cumulative Pumping Credit is zero or greater, the Settling Work Defendant shall be deemed to be in compliance with the groundwater extraction requirements. If on that date the Cumulative Pumping Credit is less than zero, the Settling Work Defendant shall be deemed to be out of compliance with the groundwater extraction requirements. 6.

Calculation of Days Out of Compliance: If the Cumulative Pumping Credit one year after the Date of Commencement is less than zero, the Settling Work Defendant shall be deemed to be out of compliance for the number of days calculated as follows:

$$\text{DOC} = \frac{- \text{PC (gallons)}}{12,960,000 \text{ (gallons/day)}}$$

where

DOC = number of Days Out of Compliance

PC = Cumulative Pumping Credit

Days Out of Compliance shall be rounded down to the nearest whole number of days, and shall be the number of days the Settling Work Defendant will be deemed out of compliance for the year. The Settling Work Defendant shall be subject to stipulated penalties for days out of compliance (see Consent Decree).

This compliance calculation will be performed annually on the anniversary date of the Date of Commencement, except in the event of a High Precipitation Year (see Section III.B.7. below).

7. Effect of a High Precipitation Year on Determining Compliance Using the Cumulative Pumping Credit: The time frame for performing the compliance calculation described in Sections III.B.5. and III.B.6. above will change as follows in the event of a High Precipitation Year. If the one year period of time over which a compliance determination is being made is a year during which the precipitation amount, as measured at a local weather station, is greater than 125% of the mean annual rainfall locally, that year shall be designated a High Precipitation Year. This precipitation determination shall be made on the anniversary date of the Date of Commencement. In the event a High Precipitation Year is designated, the compliance calculation shall be suspended until a year-long compliance period occurs during which precipitation is less than 125% of the mean annual

rainfall, in which case the compliance determination for that year performed on the anniversary date of the Date of Commencement will be performed as in Section III.B.5. above.

C. Annual Maintenance Credit: The Annual Maintenance Credit shall be measured in units of gallons and shall be used as a means for the Settling Work Defendant to perform a certain amount of routine maintenance on the Plant Facilities without being penalized under the Consent Decree. The Annual Maintenance Credit will also be used as a means of measuring compliance with the limits set on suspension of operations (see below).

1. Status on the Date of Commencement: On the Date of Commencement, the Maintenance Credit that has been accumulated throughout Phase 1 and Phase 2 up to the Date of Commencement shall be credited to the Settling Work Defendant in an amount up to 648,000,000 gallons.<sup>3</sup> If this carryover amount does not exceed 648,000,000 gallons, the Annual Maintenance Allowance, described below, shall be added to the Maintenance Credit, except that the total Annual Maintenance Credit shall not exceed 648,000,000 gallons.

2. Annual Maintenance Allowance: On the Date of

---

<sup>3</sup>50 days x 12,960,000 gallons/day

Commencement, and at one year anniversaries from the Date of Commencement, the Settling Work Defendant will be credited with an Annual Maintenance Allowance of 648,000,000 gallons. There shall be no carryover of unused Maintenance Credits.

3. Subtractions from the Maintenance Credit: During the year following the Date of Commencement, on each day which the Settling Work Defendant designates as a Maintenance Day, the Maintenance Credit will decrease by the amount of gallons by which actual groundwater pumpage falls short of the daily goal of 12,960,000 gallons. The same procedure will hold for subsequent operating years, with the maximum possible Maintenance Credit at the beginning of the year being 648,000,000 gallons, with that number being reduced during the operating year as Maintenance Days are designated.

D. Maintenance Credit for Non-Routine Maintenance: "Non-routine maintenance," as used in this paragraph, shall include unplanned maintenance events which could not reasonably be anticipated by the Settling Work Defendant, or the timing of which could not reasonably be anticipated by the Settling Work Defendant in the ordinary course of operations.

1. At the outset of an event which requires non-routine maintenance, the Settling Work Defendant shall notify EPA

of the event, the projected maintenance requirements, and the projected timing for completion of such requirements.

2. EPA shall determine a reasonable time period for the maintenance to be completed based on, but not limited to, information provided by vendors and submitted to EPA by the Settling Work Defendant. EPA shall notify the Settling Work Defendant of the deadline for completion of the non-routine maintenance.

3. The deadline for completion of the non-routine maintenance established by EPA shall be binding upon the Settling Work Defendant unless extended by EPA or the Settling Work Defendant invokes the Dispute Resolution process of Section XX of the Consent Decree.

4. Invocation of the Dispute Resolution process, by itself, will not postpone any maintenance activities.

E. Suspension of Operations: The Settling Work Defendant may suspend operations by designating a maintenance day. Maintenance outages during the operating year shall not exceed the Annual Maintenance Credit, or the Settling Work Defendant shall be considered in violation of the Consent Decree. Maintenance days may not be designated for reasons other than maintenance. The Settling Work Defendant shall notify the EPA



Project Coordinator in advance of a planned Maintenance Day and as soon as practicable when a Non-Routine Maintenance Day has occurred. Maintenance Days shall be specifically accounted for in the required Progress Reports.

## PRELIMINARY PROJECTION OF KEY DATES

y                    - Entry of Consent Decree  
y + 30 days        - Designation of Project Coordinators  
y + 180 days       - Designation of Supervising Contractor  
y + 365 days       - Second Stage O&M Work Plan  
                      Staffing Plan  
                      Time Line and Schedule  
y + 18 months     - Quality Assurance Project Plan  
                      Operational Sampling Plan  
                      Health and Safety Plan  
                      Contingency Plan

\*\*\*\*\*

x                    - Phase 2 System Operation Date  
x + 180 days       - Designation of O&M Contractor  
x + 365 days       - Lockheed Martin/City of Burbank transition  
                      commences  
x + 730 days       - City of Burbank assumes O&M

\*\*\*\*\*

### current estimates

Phase 2 System Operation Date (x)...03/06/98 (say 3/98)

Entry of Second CD (y).....approx 2/97-3/97 (say 3/97)

\*\*\*\*\*

1/96                - Phase 1 System Operation Date  
3/97                - Entry of Consent Decree  
4/97                - Designation of Project Coordinators  
9/97                - Designation of Supervising Contractor  
3/98                - O&M Second Stage Work Plan  
                      Staffing Plan  
                      Time Line and Schedule  
3/98                - Phase 2 System Operation Date  
9/98                - Designation of O&M Contractor  
                      Quality Assurance Project Plan  
                      Operational Sampling Plan  
                      Health and Safety Plan

Contingency Plan

- 1/99 - Cost Consultant Selection
- 3/99 - Lockheed Martin/City of Burbank transition  
commences
- 3/00 - City of Burbank assumes O&M
- 1/01 - First CERCLA Five-Year Review

# **APPENDIX VI**

Appendix 6  
Settling Defendants and  
recipients of notices and submissions

ACCRATRONICS SEALS CORPORATION  
WILLIAM H. FISCH TRUST, DATED OCTOBER 29, 1993  
JONES FAMILY TRUST, DATED MAY 14, 1993

c/o AccraTronics Seals Corporation

Attn: William Fisch  
2211 Kenmere Avenue  
Burbank, CA 91504

-and-

Baker & McKenzie  
Attn: Todd O. Maiden, Esq.  
One Prudential Plaza  
130 East Randolph Drive  
Chicago, IL 60601

ADLER SCREW PRODUCTS, INC.  
ERIK LIRHUS  
BERGLJOT LIRHUS  
LIRHUS FAMILY TRUST

c/o Adler Screw Products, Inc.  
Attn: Eirik Lirhus  
480 Enterprise Street  
San Marcos, CA 92069

AEROQUIP CORPORATION  
TRIVOVA CORPORATION

c/o Trinova Corporation  
Attn: Madonna F. McGrath, Esq.  
3000 Strayer Road  
Maumee, OH 43537

-and-

Rodi, Pollock, Pettker, Galbraith & Phillips  
Attn: John F. Cermak, Jr., Esq.  
801 South Grand Avenue  
Suite 400  
Los Angeles, CA 90017

Appendix 6  
Settling Defendants and  
recipients of notices and submissions

A-H PLATING, INC.  
THE WASCHAK FAMILY TRUST  
JOHN P. WASCHAK, TRUSTEE  
MELBA R. WASCHAK, TRUSTEE  
c/o Christensen, White, Miller, Fink, Jacobs, Glaser & Shapiro  
Attn: Clare Bronowski, Esq.  
2121 Avenue of the Stars  
18th Floor  
Los Angeles, CA 90067

ANTONINI FAMILY TRUST  
MARIO E. ANTONINI AND  
MARISI A. ANTONINI  
Antonini Family Trust  
11374 Tuxford Street  
Sun Valley, CA 91352

AVIALl SERVICES, INC.  
Attn: Senior Vice President & General Counsel  
2055 Diplomat Drive  
Dallas, TX 75234-8989

AVICA, INC.  
(FORMERLY GENERAL CONNECTORS, INC.)  
c/o McCutchen Doyle Brown & Enersen  
Attn: Patricia L. Shanks, Esq.  
355 South Grand Avenue  
Los Angeles, CA 90071

MCENTEE FAMILY PARTNERSHIP  
c/o Gall & Gall  
Attn: John U. Gall, Esq.  
333 South Grand Avenue  
37th Floor  
Los Angeles, CA 90071-1599

B.J. GRINDING, INC.  
ROBERT J. HOISETH AND GLENDA HOISETH  
HOISETH FAMILY TRUST  
c/o B.J. Grinding, Inc.  
Attn: Robert J. Hoiseth  
2632 North Ontario Street  
Burbank, CA 91504

Appendix 6  
Settling Defendants and  
recipients of notices and submissions

JOSEPH F. BANGS DBA BANGS MANUFACTURING COMPANY  
BANGS TRUST

c/o Bangs Manufacturing Company  
Attn: Monte Anderson  
1601 West Burbank Boulevard  
Burbank, CA 91506

LAURIE S. BERNIE AND MELVYN J. BERNIE, AS INDIVIDUALS AND AS  
TRUSTEES OF THE BERNIE TRUST  
MEL BERNIE & CO., INC. DBA ACCESSORY PLATING AND 1928 JEWELRY LTD.  
THE BERNIE TRUST

c/o 1928 Jewelry Ltd.  
Attn: Edward K. Thomas  
3000 Empire Avenue  
Burbank, CA 91505

BURMAR METAL FINISHING CORP.  
DBA BARRON ANODIZING AND PAINT

c/o Baker, Manock & Jensen  
Attn: Randall J. Krause, Esq.  
5260 North Palm Avenue  
Fourth Floor  
Fresno, CA 93704

CRANE CO./HYDRO-AIRE DIVISION

Attn: Corporate Secretary  
100 First Stamford Place  
Stamford, CT 06902

-and-

Hydro-Aire, a Division of Crane Co.

Attn: President  
3000 Winona Avenue  
Burbank, CA 91504

-and-

Paul, Hastings, Janofsky & Walker

Attn: W. Toliver Besson, Esq.  
1299 Ocean Avenue  
Fifth Floor  
Santa Monica, CA 90401

Appendix 6  
Settling Defendants and  
recipients of notices and submissions

DELTRON ENGINEERING, INC.  
FILJAN AND KUEBLER PROPERTIES  
MICHAEL FILJAN  
TONY KUEBLER

Deltron Engineering, Inc.  
Attn: Tony Kuebler  
2800 San Fernando Boulevard  
Burbank, CA 91504

HYDRA-ELECTRIC COMPANY

Attn: Henry P. Acuff  
3151 Kenwood Street  
Burbank, CA 91505

DAVIS INDUSTRIES, INC.

c/o: Robert L. Powell  
Secretary Treasurer  
P.O. Box 4495  
Chatsworth, CA 91313

JANCO CORPORATION

Attn: Richard M. Barrett  
3111 Winona Avenue  
Burbank, CA 91508

-and-

Pircher, Nichols & Meeks  
Attn: David E. Cranston, Esq.  
1999 Avenue of the Stars  
26th Floor  
Los Angeles, CA 90067

BKT ENTERPRISES, INC.

Attn: Kay Giove-Skeeters  
10901 Creek Road  
Ojai, CA 93023

-and-

Pircher, Nichols & Meeks  
Attn: David E. Cranston, Esq.  
1999 Avenue of the Stars  
26th Floor  
Los Angeles, CA 90067



Appendix 6  
Settling Defendants and  
recipients of notices and submissions

JOSLYN COMPANY, LLC FKA JOSLYN CORPORATION; JOSLYN SUNBANK  
COMPANY, LLC FKA JOSLYN SUNBANK CORPORATION

c/o Joslyn Company/Joslyn Sunbank Company

Attn: Carl S. Grabinski

1740 Commerce Way

Paso Robles, CA 93446

-and-

Thomas A. Coz, Esquire

Post Office Box 5013

Cincinnati, OH 45205-0013

OCEAN TECHNOLOGY, INC.

Attn: Harry E. Bruns

One Allied Drive

Little Rock, AR 72203

TEXTRON INC.

Attn: Jamison M. Schiff

40 Westminster Street

Providence, RI 02903

HR TEXTRON INC.

Attn: John W. Hedges

25200 West Rye Canyon Road

Valencia, CA 91355

PACIFIC PARTNERSHIP

Attn: Martin May

9363 Wilshire Boulevard

Beverly Hills, CA 90210

-and-

Baker, Manock & Jensen

Attn: Randall J. Krause, Esq.

5260 North Palm Avenue

Fourth Floor

Fresno, CA 93704

Appendix 6  
Settling Defendants and  
recipients of notices and submissions

**SARGENT INDUSTRIES, INC./  
KAHR BEARING DIVISION**

c/o Dover Diversified, Inc.

Attn: Thomas E. Bell

2607 North Grandview Boulevard

Suite 105

Waukesha, WI 53188

-and-

Munger, Tolles & Olson

Attn: Stephen M. Kristovich, Esq./Ronald C. Hausmann, Esq.

355 South Grand Avenue

Los Angeles, CA 90071-1560

**SIERRACIN CORPORATION**

Attn: Gary Roberts

12780 San Fernando Road

Sylmar, CA 91342

-and-

Anderson, McPharlin & Conners LLP

Attn: David F. Wood, Esq.

624 South Grand Avenue

19th Floor

Los Angeles, CA 90017

**INDUSTRIAL BOWLING CORPORATION**

Attn: Bradley D. Howard

1819 West Olive Avenue

Burbank, CA 91506

-and-

Lawler, Bonham & Walsh

Attn: Carol A. Woo, Esq.

300 Esplanade Drive

Suite 300

Oxnard, CA 93031

**R&G SLOANE MANUFACTURING CO., INC.**

Attn: Bill Smith

7777 Sloane Drive

Little Rock, AR 72206

Appendix 6  
Settling Defendants and  
recipients of notices and submissions

SPACE-LOK, INC.

Attn: Jeffrey W. Wade  
2526 North Ontario Street  
Burbank, CA 91504

-and-

Hedges & Caldwell  
Attn: Michael R. Leslie, Esq.  
606 South Olive Street  
Suite 500  
Los Angeles, CA 90014-1507

THE ESTATE OF ALBINA BREBBIA  
CHRISTINA COGAR INDIVIDUALLY AND  
AS EXECUTRIX FOR THE ESTATE  
OF ALBINA BREBBIA

c/o Loeb and Loeb  
Attn: Malissa Hathaway McKeith  
1000 Wilshire Boulevard  
Los Angeles, CA 90017

STAINLESS STEEL PRODUCTS, INC.  
ZIMMERMAN HOLDINGS, INC.

c/o Zimmerman Holdings, Inc.  
Attn: President  
2600 Mission Street  
Suite 100  
San Marino, CA 91108-1676

-and-

Rodi, Pollock, Pettker, Galbraith & Phillips  
Attn: Robert A. Yahiro, Esq.  
801 South Grand Avenue  
Suite 400  
Los Angeles, CA 90017

THE UHLMANN OFFICES, A CALIFORNIA CORPORATION./  
SUNHILL PARTNERS, A CALIFORNIA PARTNERSHIP

13245 Riverside Drive  
Suite 500  
Sherman Oaks, CA 91423

-and-

Proskauer Rose Goetz & Mendelsohn LLP  
Attn: Barry Groveman, Esq.  
2121 Avenue of the Stars, Suite 2700  
Los Angeles, CA 90067

Appendix 6  
Settling Defendants and  
recipients of notices and submissions

STEVE'S PLATING CORPORATION  
UNIFACTOR, INC.  
TERRY S. KNEZEVICH

c/o Timothy V.P. Gallagher Law Offices  
Attn: Timothy V.P. Gallagher, Esq.  
3915 Stone Canyon Avenue  
Sherman Oaks, CA 91403

WALTON R. EMMICK  
DENISE E. MCLAUGHLAN  
SHARYN E. SCHRICK  
SANDRA E. BOWMAN  
CLELTA SPELMAN

c/o Barger & Wolen LLP  
Attn: Edwin A. Oster, Esq./Robert K. Renner, Esq.  
19800 MacArthur Boulevard  
Suite 800  
Irvine, CA 92612-2427

ELAINE S. BARR  
HOMER R. BARR AND ELAINE S. BARR FAMILY TRUST

c/o The O'Toole Law Firm  
Attn: Patricia M. O'Toole, Esq.  
601 South Figueroa Street  
Suite 4100  
Los Angeles, CA 90017

DIANE BARR

c/o Edwards, Edwards & Ashton  
Attn: Wilbur Gin  
420 North Brand Boulevard  
Suite 500  
Glendale, CA 91203

L.A. GAUGE CO., INC.

Attn: James Hunt, President  
7440 San Fernando Road  
Sun Valley, CA 91352-4398

-and-

Landels Ripley & Diamond, LLP  
Attn: Robert L. Hines, Esq.  
350 The Embarcadero  
San Francisco, CA 94105-1250

Appendix 6  
Settling Defendants and  
recipients of notices and submissions

TWISS HEAT TREATING CO., INC.  
DBA TWISS HEAT TREATING CO.  
THE WILLIAM E. AND EVELYN TWISS FAMILY TRUST  
WILLIAM E. TWISS AND EVELYN TWISS  
W AND E TWISS TRUST

c/o Twiss Heat Treating Co., Inc.

Attn: William E. Twiss

2503 North Ontario Street

Burbank, CA 91504

-and-

Roper & Folino

Attn: John B. Larson, Esq.

3255 Wilshire Boulevard

Suite 1700

Los Angeles, CA 90010-1420

VALLEY ENAMELLING CORP.

2509 North Ontario Street

Burbank, CA 91504

WALTON R. EMMICK

DENISE E. MCLAUGHLAN

SHARYN E. SCHRICK

SANDRA E. BOWMAN

CLELTA SPELMAN

c/o Barger & Wolen

Attn: Edwin A. Oster or Robert K. Renner

19800 MacArthur Boulevard

Suite 800

Irvine, CA 92715

Appendix 6  
Settling Defendants and  
recipients of notices and submissions

HM HOLDINGS, INC.

PH BURBANK HOLDINGS, INC.

Attn: Samuel J. Friedman, Vice President, General Counsel & Secretary

SCM Chemicals

200 International Circle

Suite 5000

Hunt Valley, MD 21030

-and-

Stringfellow & Associates, A Law Corporation

Attn: Walter A. Stringfellow

444 South Flower Street

31st Floor

Los Angeles, CA 90071

WEBER AIRCRAFT, INC.

Attn: Michel LaBarre

1300 East Valencia Drive

Fullerton, CA 92631

-and-

Stringfellow & Associates, A Law Corporation

Attn: Walter A. Stringfellow

444 South Flower Street

31st Floor

Los Angeles, CA 90071

LOCKHEED MARTIN CORPORATION

Attn: Dominic J. Hanket

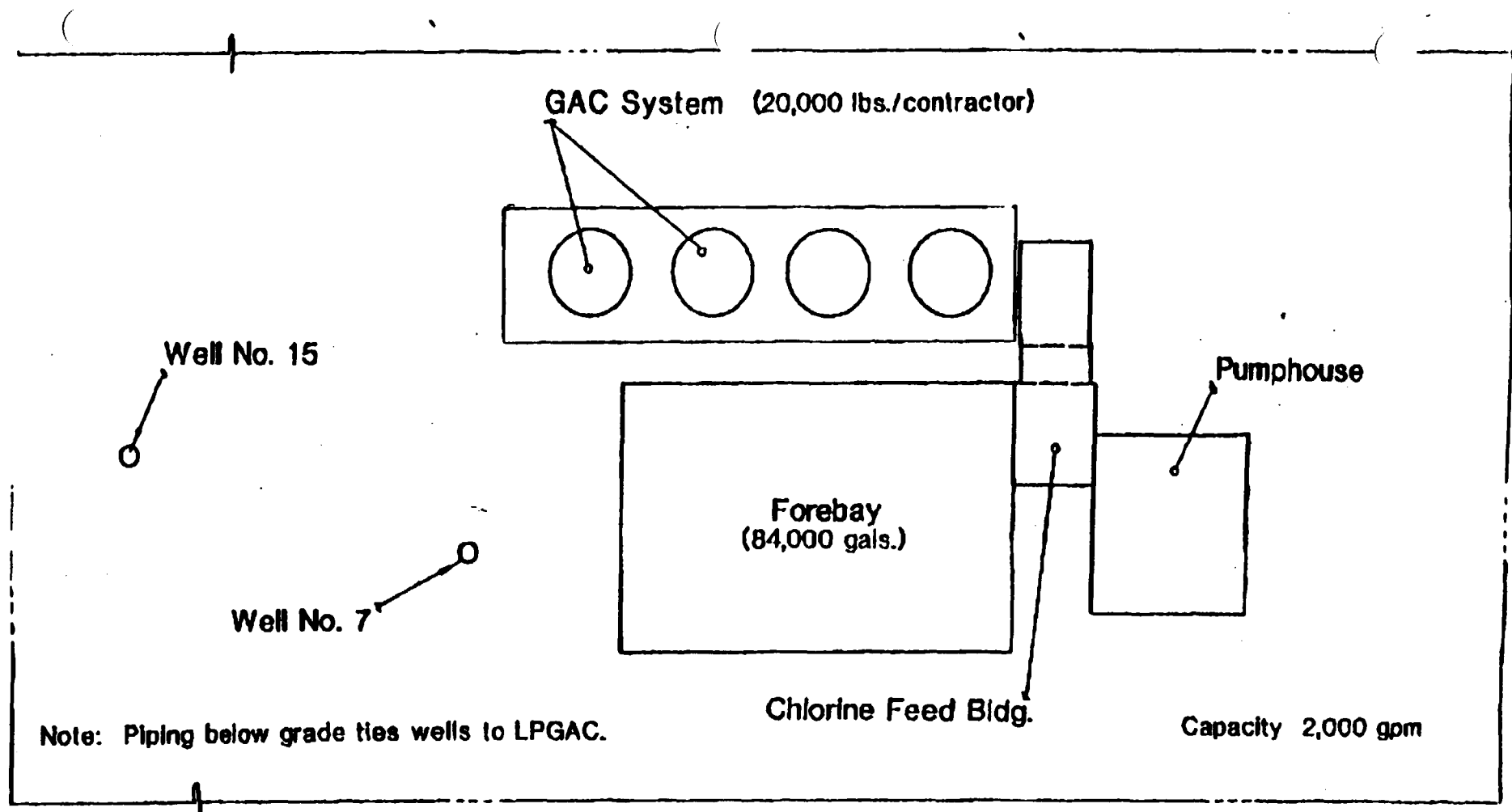
2550 North Hollywood Boulevard

Suite 301

Burbank, CA 91505

# **APPENDIX VII**

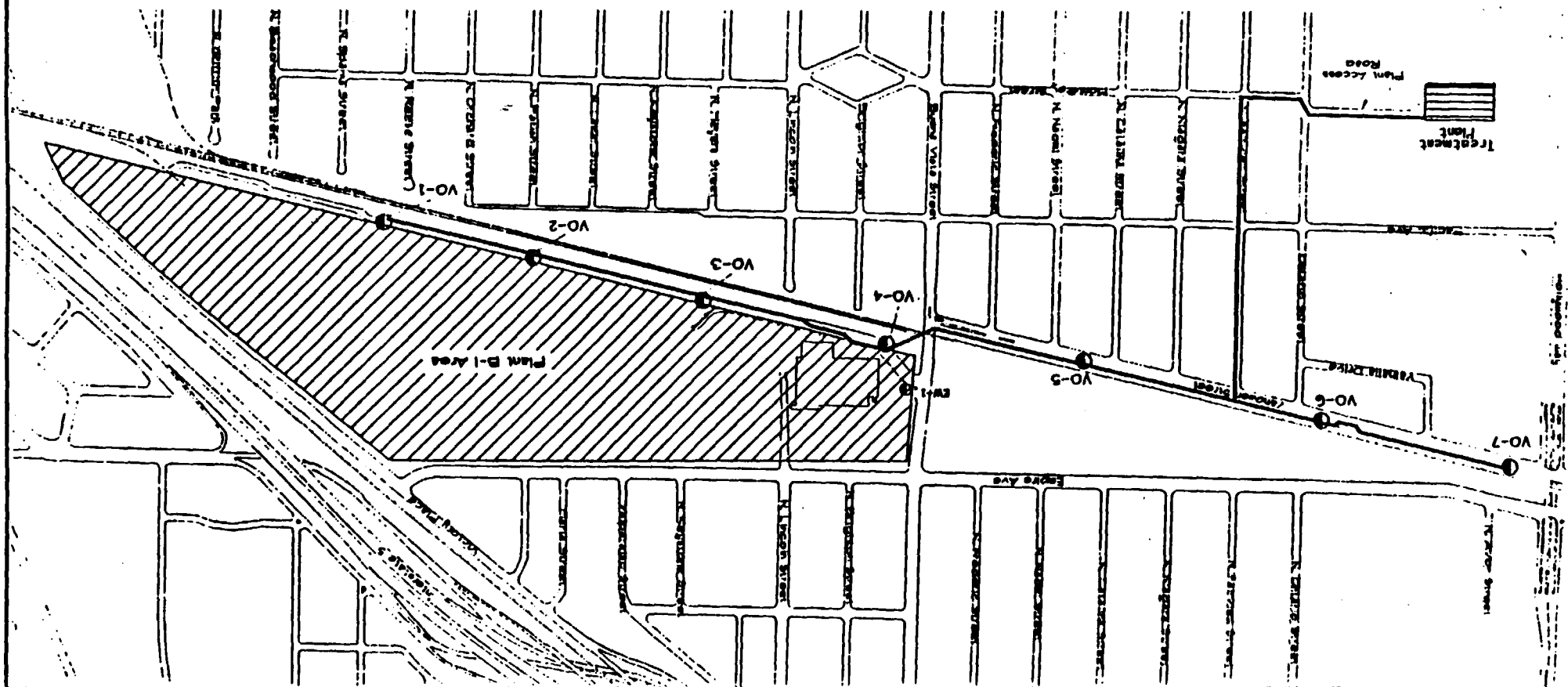
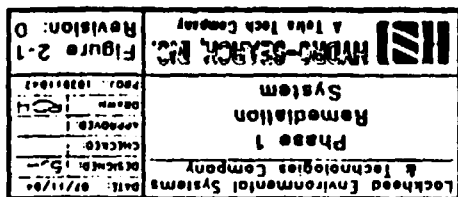
802

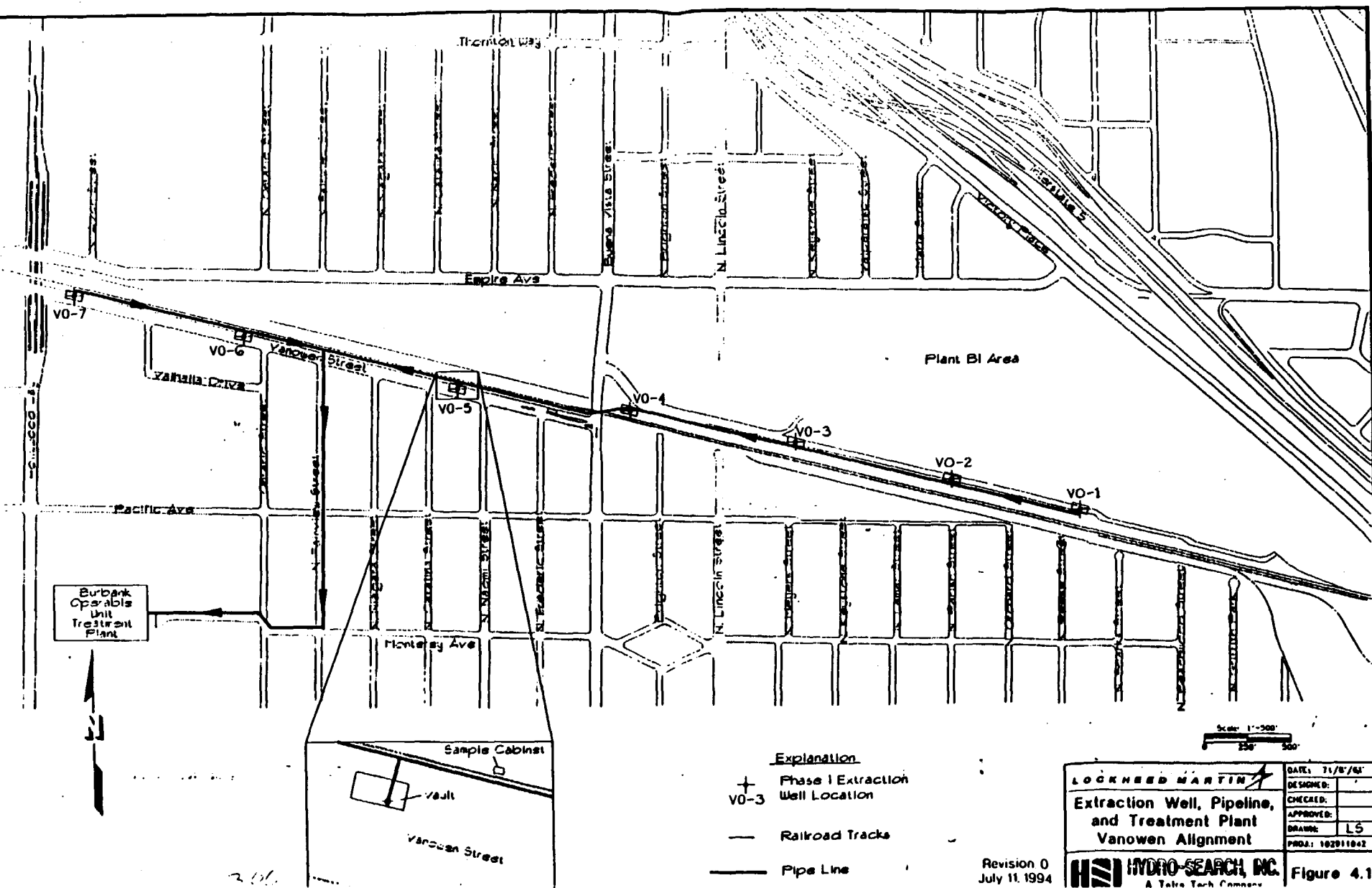


City of Burbank  
Public Service Department  
320 N. Lake St.  
Liquid Phase Granular Activated Carbon

APPENDIX 7  
Consent Decree II







# **EXHIBIT 1**

1 BARRY M. HARTMAN  
2 Acting Assistant Attorney General  
3 Environment & Natural Resources Division  
4 U.S. Department of Justice  
5 Washington, D.C. 20530

6 WILLIAM A. WEINISCHKE  
7 Trial Attorney  
8 Environmental Enforcement Section  
9 Environment & Natural Resources Division  
10 United States Department of Justice  
11 P.O. Box 7611  
12 Ben Franklin Station  
13 Washington, D.C. 20044  
14 (202) 514-4592

15 LOURDES G. BAIRD  
16 United States Attorney  
17 LEON W. WEIDMAN  
18 Chief, Civil Division  
19 PETER HSIAO  
20 Assistant United States Attorney  
21 312 North Spring Street  
22 Los Angeles, California 90012  
23 Telephone: (213) 894-2474

24 NANCY J. MARVEL  
25 Regional Counsel  
26 MARCIA PRESTON  
Assistant Regional Counsel  
75 Hawthorne Street  
San Francisco, California 94105  
Telephone: (415) 744-1388

Attorneys for Plaintiff, United States of America

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,

v.

LOCKHEED CORPORATION,  
CITY OF BURBANK, CALIFORNIA,  
a Charter City, and  
WEBER AIRCRAFT, INC.,  
Defendants.

Civil Action No. 91-4527-MRP(Tx)

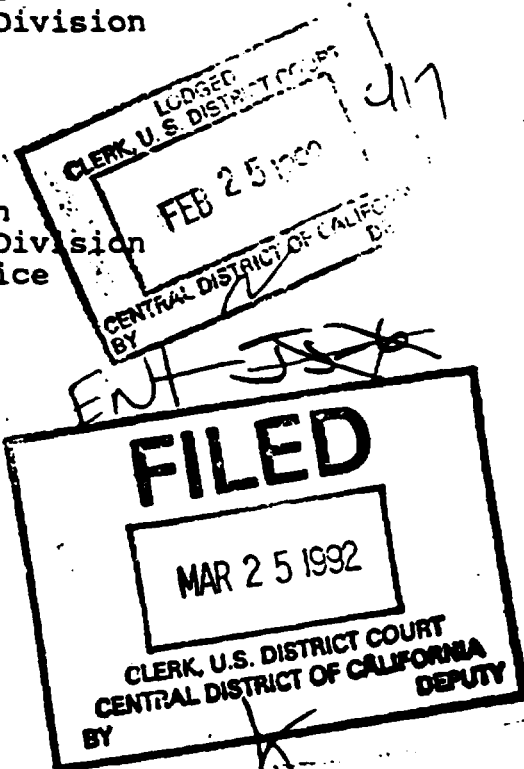
CONSENT DECREE

DOCKETED

MLD COPY PTYS

MLD NOTICE PTYS

N. JS-6



1 BARRY M. HARTMAN  
2 Acting Assistant Attorney General  
3 Environment & Natural Resources Division  
4 U.S. Department of Justice  
5 Washington, D.C. 20530

6 WILLIAM A. WEINISCHKE  
7 Trial Attorney  
8 Environmental Enforcement Section  
9 Environment & Natural Resources Division  
10 United States Department of Justice  
11 P.O. Box 7611  
12 Ben Franklin Station  
13 Washington, D.C. 20044  
14 (202) 514-4592

15 LOURDES G. BAIRD  
16 United States Attorney  
17 LEON W. WEIDMAN  
18 Chief, Civil Division  
19 PETER HSIAO  
20 Assistant United States Attorney  
21 312 North Spring Street  
22 Los Angeles, California 90012  
23 Telephone: (213) 894-2474

24 NANCY J. MARVEL  
25 Regional Counsel  
26 MARCIA PRESTON  
Assistant Regional Counsel  
75 Hawthorne Street  
San Francisco, California 94105  
Telephone: (415) 744-1388

Attorneys for Plaintiff, United States of America

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, )

Plaintiff, )

v. )

LOCKHEED CORPORATION, )  
CITY OF BURBANK, CALIFORNIA, )  
a Charter City, and )  
WEBER AIRCRAFT, INC., )

Defendants. )

Civil Action No.

CONSENT DECREE

**TABLE OF CONTENTS**

<b><u>SECTIONS</u></b>	<b><u>PAGE</u></b>
I. Definitions.....	3
II. Jurisdiction.....	9
III. Denial of Liability.....	9
IV. Site Background.....	10
V. Purpose.....	13
VI. Binding Effect.....	14
VII. Work To Be Performed.....	17
VIII. Quality Assurance.....	41
IX. Project Coordinators.....	44
X. Site Access.....	46
XI. Submission of Documents, Sampling and Analytic Data.....	54
XII. Financial Assurance and Trust Accounts .....	58
XIII. Compliance With Applicable Laws and Regulations...	63
XIV. Retention of Records.....	65
XV. Reimbursement of Past Costs.....	66
XVI. Reimbursement of Future Response Costs.....	67
XVII. Reservation and Waiver of Rights.....	69
XVIII. Covenant Not To Sue.....	75
XIX. Stipulated Penalties.....	82
XX. Dispute Resolution.....	95
XXI. Force Majeure.....	98
XXII. Contribution Protection.....	101
XXIII. Form of Notice.....	101

1	XXIV. Modification.....	103
2	XXV. Admissibility of Data.....	104
3	XXVI. Effective Date.....	104
4	XXVII. Community Relations.....	104
5	XXVIII. Public Participation.....	104
6	XXIX. Notice To The State.....	105
7	XXX. Consistency With The National Contingency Plan....	105
8	XXXI. Indemnification of the United States.....	105
9	XXXII. Other Claims.....	108
10	XXXIII. Continuing Jurisdiction.....	108
11	XXXIV. Termination and Satisfaction.....	108
12	XXXV. Section Headings.....	110

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

1       WHEREAS, the United States of America ("United States"), on  
2       behalf of the Administrator of the United States Environmental  
3       Protection Agency ("EPA"), has filed concurrently with this Con-  
4       sent Decree ("Consent Decree" or "Decree") a complaint in this  
5       matter pursuant to the Comprehensive Environmental Response, Com-  
6       pensation and Liability Act, 42 U.S.C. § 9601 et seq., as amended  
7       by the Superfund Amendments and Reauthorization Act of 1986, Pub.  
8       L. No. 99-499, 100 Stat. 1613 (1986) ("CERCLA"), seeking to com-  
9       pel the Defendants in this action to perform certain remedial ac-  
10      tions and to recover certain response costs that have been and  
11      will be incurred by the United States in response to alleged  
12      releases and threatened releases of hazardous substances from a  
13      facility as defined in Section 101(9) of CERCLA, 42 U.S.C. §  
14      9601(9), known as the Burbank Operable Unit Site ("the Site"),  
15      located in Burbank, California; and

16      WHEREAS, the Burbank Operable Unit Site is a part of the San  
17      Fernando Valley Superfund site #1 (also known as the North Hol-  
18      lywood Area Superfund site), which was listed on the National  
19      Priorities List ("NPL") in June of 1986, pursuant to CERCLA Sec-  
20      tion 105, 42 U.S.C. § 9605; and

21      WHEREAS, the United States alleges that the past, present,  
22      and/or potential migrations of "hazardous substances," as defined  
23      in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), from the Site  
24      constitute actual and/or threatened "releases," as defined in  
25      Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and further al-  
26      leges that the Lockheed Corporation ("Lockheed"), Weber Aircraft,



1 Inc. ("Weber"), and the City of Burbank, California (the "City")  
2 are persons subject to liability under Section 107(a) of CERCLA,  
3 42 U.S.C. § 9607(a); and

4 WHEREAS, Lockheed, Weber and the City are persons, as  
5 defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21); and

6 WHEREAS, pursuant to Sections 121 and 122 of CERCLA, 42  
7 U.S.C. §§ 9621 and 9622, the United States, Lockheed, Weber and  
8 the City have stipulated and agreed to the making and entry of  
9 this Consent Decree prior to the taking of any testimony, and in  
10 settlement of the claims alleged against Lockheed, Weber and the  
11 City in the complaint; and

12 WHEREAS, the United States, Lockheed, Weber and the City  
13 have agreed upon a settlement pursuant to which Lockheed is  
14 obligated to fund and perform certain remedial work at the Site  
15 and to make payments to the United States, the City is obligated  
16 to fund and perform certain remedial work, and Weber is obligated  
17 to contribute to the funding of certain remedial work; and

18 WHEREAS, the United States, Lockheed, Weber and the City  
19 agree that the settlement of these claims is made in good faith  
20 and in an effort to avoid expensive and protracted litigation but  
21 without any admission or finding of liability or fault as to any  
22 allegation or matter;

23 NOW, THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as fol-  
24 lows:

**I. DEFINITIONS**

**A. "Burbank Well Field" or "Well Field" shall mean the area within the political boundaries of the City encompassing Burbank Public Service Department wells 6A, 7, 10, 11A, 12, 13A, 14A, 15, 17 and 18, as shown on Appendix C. (This Appendix contains corrections to the well numbers shown in Figure 2 of the Explanation of Significant Differences ("ESD")).**

**B. "Covered Matters" shall consist of any and all civil liability to the United States for causes of action arising under Sections 106 and 107(a) of CERCLA and Section 7003 of the Resource Conservation and Recovery Act ("RCRA") for performance of the Work; all Past Response Costs; and all Future Response Costs that are incurred by the United States and paid by Lockheed with respect to the Site prior to EPA's issuance of a Certificate of Completion pursuant to Section XXXIV (Termination and Satisfaction). Covered Matters specifically does not include performance of any Remedial Investigation/Feasibility Study ("RI/FS") other than that already completed for the Burbank Operable Unit; additional response actions that may be implemented pursuant to the final remedy or pursuant to any future Explanation(s) of Significant Difference (other than actions that Settling Work Defendants have agreed to perform pursuant to Subpart F of Section VII (Work To Be Performed)), Record(s) of Decision or Amendment(s) to any Record of Decision; costs or activities related to any operable unit other than the Burbank Operable Unit, including any future operable unit(s); any new environmental condition which is identified in the Basinwide RI/FS**

1 or of which the United States is unaware at this time; or any  
2 remedial actions that are necessary to implement the Record of  
3 Decision ("ROD"), as modified by the Explanation of Significant  
4 Differences ("ESD") and Subpart F of Section VII (Work To Be  
5 Performed), other than the Work. Covered Matters also does not  
6 include response costs incurred by the State of California, the  
7 California Hazardous Substance Account, and any of the State's  
8 agencies, representatives, contractors or subcontractors, unless  
9 these costs were reimbursed by EPA under a cooperative agreement.

10 C. "City" shall mean the City of Burbank, California, a  
11 charter city, and any of its divisions, departments and other  
12 subdivisions. "City" shall not include any joint powers  
13 authority of which the City of Burbank is a member.

14 D. "Day" shall mean a calendar day, unless expressly stated  
15 to be a working day; provided, however, that in computing any  
16 period of time under this Consent Decree, where the last day  
17 would fall on a Saturday, Sunday, or federal or State holiday,  
18 the period shall run until the close of business of the next  
19 working day.

20 E. "Environment" shall have the meaning set forth in CERCLA  
21 Section 101(8), 42 U.S.C. § 9601(8).

22 F. "EPA" shall mean the United States Environmental Protec-  
23 tion Agency.

24 G. "Explanation of Significant Differences" ("ESD") shall  
25 mean the document signed by the EPA Region IX Regional Ad-  
26 ministrator on November 21, 1990, attached as Appendix B and in-  
27 corporated herein by reference, which modifies the ROD.

1       H. "Fund" or "Superfund" shall mean the Hazardous Sub-  
2 stances Superfund, referenced in Section 111 of CERCLA, 42 U.S.C.  
3 § 9611.

4       I. "Future Response Costs" shall mean all costs including  
5 but not limited to all administrative, indirect, enforcement, in-  
6 vestigative, remedial, removal, oversight and monitoring costs  
7 incurred by the United States in connection with the Site pur-  
8 suant to CERCLA, subsequent to December 31, 1989 and prior to the  
9 termination of this Consent Decree, except that the term shall  
10 not include the costs of performing any RI/FS or the costs of im-  
11 plementing any future Record(s) of Decision, Explanation(s) of  
12 Significant Differences (other than an Explanation of Significant  
13 Differences setting forth the changes provided for in Subpart F  
14 of Section VII (Work To Be Performed) or Amendment(s) to  
15 Record(s) of Decision.

16       J. "Lockheed" shall mean the Lockheed Corporation, incor-  
17 porated in the state of Delaware, and any of its subsidiaries,  
18 parents, affiliates, predecessors and successors.

19       K. "Oversight Costs" shall mean all costs incurred by the  
20 United States in overseeing the Work and assessing the adequacy  
21 of the City's and Lockheed's performance pursuant to this Decree,  
22 including but not limited to the costs of reviewing or developing  
23 plans or reports.

1        L. "Past Response Costs" shall mean all costs, including  
2 but not limited to all administrative, indirect, enforcement, in-  
3 vestigative, remedial, removal, oversight and monitoring costs  
4 incurred by the United States in connection with the Site, prior  
5 to and including December 31, 1989.

6        M. "Point of Interconnection" shall mean the physical point  
7 of transfer of the treated groundwater after it goes through the  
8 booster station but before it enters the blending facilities.  
9 For purposes of this Consent Decree, such transfer shall take  
10 place at the upstream flange of a water meter located on a  
11 pipeline between the booster station and the blending facilities  
12 and used to measure the quantity of water to be transferred, as  
13 depicted in Appendix E.

14       N. "Point of Delivery" shall mean the physical point of  
15 transfer of the treated groundwater from Lockheed to the City.  
16 For the purposes of this Consent Decree, such transfer shall take  
17 place at the downstream flange of a meter that is located between  
18 the groundwater Treatment Plant and the Valley Forebay Facility  
19 and is used to measure the quantity of water to be transferred,  
20 as depicted in Appendix E.

21       O. "Point of MWD Connection" shall mean the physical point  
22 of transfer of the Metropolitan Water District ("MWD") blending  
23 water from the MWD pipeline to the blending facilities. For the  
24 purposes of this Decree, such transfer shall take place at the  
25 downstream flange of a meter that is located between the MWD  
26 pipeline and the blending facilities and is used to measure the  
27 quantity of water to be transferred, as depicted in Appendix E.

1 P. "Point of Water System Introduction" shall mean the  
2 physical point of transfer of the blended water from the blending  
3 facilities to the City's public water supply distribution system.  
4 For the purposes of this Consent Decree, such transfer shall take  
5 place at the downstream flange of a valve located on the pipeline  
6 between the blending facilities and the City's public water  
7 supply distribution system, as depicted in Appendix E.

8 Q. "Record of Decision" ("ROD") shall mean the document  
9 signed on June 30, 1989, by the EPA Region IX Deputy Regional Ad-  
10 ministrator, acting for the Regional Administrator, attached  
11 hereto as Appendix A and incorporated herein by reference.

12 R. "Release" shall have the meaning set forth in CERCLA  
13 Section 101(22), 42 U.S.C. § 9601(22).

14 S. "Remedial Action Work" shall mean those activities  
15 (including all operation and maintenance required by this Consent  
16 Decree) to be undertaken by Settling Work Defendants to implement  
17 the final plans and specifications submitted by Settling Work  
18 Defendants pursuant to the Remedial Design Work Plan approved by  
19 EPA pursuant to Section VII (Work To Be Performed). The Remedial  
20 Action Work does not constitute all of the remedial action  
21 selected in the ROD (as modified by the ESD and Subpart F of Sec-  
22 tion VII (Work To Be Performed)).

23 T. "Remedial Design Work" shall mean the phase of the Work  
24 required by this Consent Decree wherein, consistent with the ROD  
25 (as modified by the ESD and Subpart F of Section VII (Work To Be  
26 Performed)), this Decree and the National Contingency Plan, 40  
27 C.F.R. Section 300 et. seq. ("NCP"), the engineering plans and

1 technical specifications are to be developed by Settling Work  
2 Defendants, for approval by EPA, and on which implementation of  
3 the Remedial Action Work shall be based.

4 U. "Settling Defendants" shall mean Lockheed, Weber and the  
5 City.

6 V. "Settling Parties" shall mean the United States of  
7 America, Lockheed, Weber and the City.

8 W. "Settling Work Defendants" shall mean Lockheed and the  
9 City.

10 X. "State" shall mean the State of California.

11 Y. "Statement of Work" shall mean the document containing  
12 EPA's best effort to provide a detailed description of the steps  
13 necessary to accomplish the Work, attached as Appendix D and in-  
14 corporated herein by reference, as it may be modified in accor-  
15 dance with Section XXIV (Modification).

16 Z. "Site" (when capitalized) or "Burbank Operable Unit  
17 Site" shall mean the areal extent of TCE and/or PCE groundwater  
18 contamination that is presently located in the vicinity of the  
19 Burbank Well Field and including any areas to which such  
20 groundwater contamination migrates.

21 AA. "System Operation Date" for each phase described in  
22 Subpart E of Section VII (Work To Be Performed) shall mean the  
23 first day on which Lockheed begins extracting and treating  
24 groundwater with the facilities constructed as part of the  
25 Remedial Action Work for that phase.

26 BB. "United States" shall mean the United States of  
27 America.

1 CC. "Valley Forebay Facility" shall mean the structure  
2 owned by the City and designed to receive the treated water as a  
3 regulating reservoir for the booster station depicted in Appendix  
4 E. The reservoir has an overflow elevation of 655 feet.

5 DD. "Weber" shall mean Weber Aircraft, Inc., incorporated  
6 in the state of Delaware, and any of its subsidiaries, parents,  
7 affiliates, predecessors and successors.

8 EE. "Work" shall mean the performance of the Remedial  
9 Design Work and the Remedial Action Work in a manner which ac-  
10 complishes all of the requirements of Section VII (Work To Be  
11 Performed) of this Consent Decree.

12 FF. "Working Day" shall mean a day other than a Saturday,  
13 Sunday, or federal or State holiday.

## 14 II. JURISDICTION

15 A. The Court has jurisdiction over the subject matter of  
16 and the parties to this Consent Decree pursuant to CERCLA,  
17 federal question jurisdiction, and the status of the United  
18 States as plaintiff. Sections 106, 107, and 113 of CERCLA, 42  
19 U.S.C. §§ 9606, 9607, and 9613, and 28 U.S.C. §§ 1331, 1345.

20 B. Settling Defendants do not contest and agree not to con-  
21 test the authority of the United States to maintain this action  
22 or the Court's jurisdiction to enter and enforce this Consent  
23 Decree.

## 24 III. DENIAL OF LIABILITY

25 Settling Defendants deny any and all legal or equitable  
26 liability under any federal, State, or local statute, regulation  
27 or ordinance, or the common law, for any response costs, damages



1 or claims caused by or arising out of conditions at or arising  
2 from the Burbank Well Field or the Site. By entering into this  
3 Consent Decree, or by taking any action in accordance with it,  
4 Settling Defendants do not admit any allegations contained herein  
5 or in the complaint, nor do Settling Defendants admit liability  
6 for any purpose or admit any issues of law or fact or any responsibility  
7 hazardous substance into the environment. Nothing in this Sec-  
8 tion shall alter Settling Defendants' agreement not to challenge  
9 the Court's jurisdiction as set forth in Section II  
10 (Jurisdiction).

#### 11 IV. SITE BACKGROUND

12 The following is a summary of the Site background as alleged  
13 by the United States which, for the purposes of this Decree, Set-  
14 tling Defendants neither admit nor deny:

5 A. The North Hollywood Area Superfund site is one of four  
16 sites in the San Fernando Valley Groundwater Basin ("Basin")  
17 which were placed on the National Priorities List ("NPL") concu-  
18 rently in June of 1986. Remediation of groundwater in the Basin  
19 is a collaborative undertaking of EPA, the Los Angeles Department  
20 of Water and Power ("DWP"), the California Department of Health  
21 Services ("DHS") and the California Regional Water Quality Con-  
22 trol Board ("RWQCB").

23 B. The Burbank Operable Unit Site is a part of the North  
24 Hollywood Area Superfund site (also known as the San Fernando  
25 Valley Area #1 Superfund site). The Burbank Operable Unit Site  
26 presently includes the Northeast corner of the North Hollywood  
27 Area Superfund site, as well as the areas to which the plume of

1 TCE and PCE has spread beyond the original boundaries drawn at  
2 the time the North Hollywood Area Superfund site was listed on  
3 the NPL. Based on the nature of the groundwater contamination at  
4 the Site, EPA has decided to institute remedial actions at the  
5 Site, as detailed in the ROD, ESD and this Consent Decree as a  
6 separate "Operable Unit," prior to completion of the Basinwide  
7 Remedial Investigation/Feasibility Study (described below) and  
8 decisions on what further remedial actions may be necessary in  
9 the Basin and/or at the Site.

10 C. Concentrations of volatile organic compounds ("VOCs")  
11 exceeding State Action Levels ("SALs") and Federal Maximum Con-  
12 taminant Levels ("MCLs") were first discovered in the Basin in  
13 1980. Since that time, the RWQCB and DHS have supervised soil  
14 and groundwater sampling and analysis in the Burbank area.  
15 Presently, VOC family members trichloroethylene ("TCE") and  
16 perchloroethylene ("PCE") have been found in the Burbank Well  
17 Field at levels that exceed the MCLs for these hazardous sub-  
18 stances. These materials are commonly used for machinery  
19 degreasing, dry cleaning, and metal plating. The Federal MCL for  
20 TCE in drinking water is set at 5 parts per billion ("ppb"). The  
21 State MCL for PCE in drinking water is also set at 5 ppb. To  
22 date, levels of TCE of up to 1,800 ppb and levels of PCE of up to  
23 590 ppb have been measured at the City of Burbank's extraction  
24 wells. Higher levels of these hazardous substances have been  
25 measured at other wells within the Site. EPA, in conjunction  
26 with RWQCB, DWP and DHS, has conducted and continues to conduct  
27 source investigations at the Site.

1           D. In August of 1987, EPA entered into a cooperative agree-  
2 ment with DWP which allowed DWP to conduct a Basin-wide Remedial  
3 Investigation ("RI"). EPA has also entered into a multi-site  
4 cooperative agreement with DHS which funds DHS participation in  
5 remedial activities at many California Superfund sites, including  
6 those in the Basin, under authority of CERCLA Section 104, 42  
7 U.S.C. § 9604. In December of 1989, DWP completed construction  
8 of the North Hollywood Aeration Facility to address contamination  
9 at the North Hollywood Operable Unit, the first Operable Unit in  
10 the Basin. Treated groundwater from the North Hollywood Aeration  
11 Facility is chlorinated and released to the public water supply,  
12 where it is used for drinking water purposes. In September of  
13 1989, EPA entered into a cooperative agreement with the RWQCB  
14 which funds source investigation and source control work in the  
15 Basin.

16           E. The Burbank Operable Unit is the second Operable Unit in  
17 the Basin. In October of 1988, the Burbank Operable Unit  
18 Feasibility Study ("OUFS") was released. The OUFS set forth a  
19 range of remedial actions which EPA considered for the Burbank  
20 Operable Unit Site. The Record of Decision (ROD) signed on June  
21 30, 1989 selected an interim remedy for the Site. This remedy  
22 was modified by the Explanation of Significant Differences  
23 ("ESD") issued by EPA on November 21, 1990. EPA has decided to  
24 include in this Decree some additional modifications to the in-  
25 terim remedy, as provided in Subpart F of Section VII (Work To Be  
26 Performed). These modifications do not represent a fundamental  
27 change to the remedy.

**V. PURPOSE**

**A. The purpose of this Consent Decree is to resolve amicably a portion of the existing dispute between the Settling Parties as to whether remedial action is necessary and appropriate with respect to the Burbank Operable Unit Site and to settle the claims asserted against Settling Defendants in the complaint filed in this matter.**

**B. This Consent Decree is also intended to serve the public interest by protecting the public health, welfare, and the environment from releases or threatened releases of hazardous substances from facilities located in or near the Site by implementation of the Work set out in Section VII (Work To Be Performed) of this Consent Decree and to obtain reimbursement from Lockheed for certain of the United States' response costs as specified in this Consent Decree.**

**C. The Work and the tasks described in Subpart B of Section VII (Work To Be Performed) are intended to implement a portion of the ROD, as modified by the ESD and to meet the requirements of Subpart F of Section VII (Work To Be Performed). The Settling Parties recognize that the remedy selected in the ROD, ESD and this Decree may not constitute the final remedy for groundwater at the Site. The Settling Parties also recognize that performance of this Consent Decree will not fully implement the ROD and ESD for the Burbank Operable Unit.**

**VI. BINDING EFFECT**

**A.1. The undersigned representative of Lockheed certifies that Lockheed is fully authorized to enter into the terms and conditions of this Decree and that he or she is fully authorized to execute this document and legally bind Lockheed to the provisions of this Decree.**

**2. The undersigned representative of the City certifies that the City is fully authorized to enter into the terms and conditions of this Decree and that he or she is fully authorized to execute this document and legally bind the City to the provisions of this Decree.**

**3. The undersigned representative of Weber certifies that Weber is fully authorized to enter into the terms and conditions of this Decree and that he or she is fully authorized to execute this document and legally bind Weber to the provisions of this Decree.**

**4. The undersigned Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that the United States is fully authorized to enter into the terms and conditions of this Decree and that he or she is fully authorized to execute this document and legally bind the United States to the provisions of this Decree.**

**B. The person(s) identified by name and address in Section XXIII (Form of Notice) of this Consent Decree as the recipient for each Settling Defendant is authorized by that Settling Defendant to accept service of process by mail on its behalf with respect to all matters arising under this Consent Decree. For**

1 purposes of entry and enforcement of this Consent Decree only, each Sett  
2 manner and to waive the formal service requirements set forth in  
3 Rule 4 of the Federal Rules of Civil Procedure, including service  
4 of a summons, and any applicable local rules of this Court.

5 C. This Consent Decree shall apply to and be binding upon  
6 Settling Defendants, their officers, officials, directors, suc-  
7 cessors, and assigns, and upon the United States and its repre-  
8 sentatives.

9 D. Each Settling Work Defendant agrees to provide a copy of  
10 this Consent Decree, as entered, along with all relevant addi-  
11 tions and modifications to this Consent Decree, as appropriate,  
12 to each person, including all contractors and subcontractors,  
13 retained by that Settling Work Defendant to perform the Work re-  
14 quired by this Decree within thirty (30) days of retainer and to  
15 condition any contract for the Work on compliance with this Con-  
16 sent Decree.

17 E.1. No change in ownership of Lockheed, property or assets  
18 owned by Lockheed or the corporate status of Lockheed, including  
19 but not limited to any transfer of real or personal property,  
20 shall alter EPA or Settling Defendants' rights and obligations  
21 under this Consent Decree, including access rights under this  
22 Decree. In the event that Lockheed transfers any real property  
23 it owns in the City of Burbank prior to termination of this  
24 Decree pursuant to Section XXXIV (Termination and Satisfaction),  
25 Lockheed shall provide a copy of this Decree to the transferee  
26  
27

1 prior to consummating the transaction and evidence such action by  
2 providing a copy of its transmittal letter to EPA within ten (10)  
3 working days of consummating the transaction.

4 2. No change in ownership of property or assets owned by  
5 the City or the legal status of the City, including but not  
6 limited to any transfer of real or personal property, shall alter  
7 EPA or Settling Defendants' rights and obligations under this  
8 Consent Decree, including access rights under this Decree. In  
9 the event that the City transfers any of the real property it  
10 owns at 164 West Magnolia Boulevard in the City of Burbank prior  
11 to termination of this Decree pursuant to Section XXXIV  
12 (Termination and Satisfaction), the City shall provide a copy of  
13 this Decree to the transferee prior to consummating the transac-  
14 tion and evidence such action by providing a copy of its trans-  
15 mittal letter to EPA within ten (10) working days of consummating  
16 the transaction. Notwithstanding this Subpart, nothing in this  
17 Decree shall be construed as or shall act as a prohibition on the  
18 City's ability to freely vacate, abandon or otherwise dispose of  
19 its streets, rights of way or any other interest it has in  
20 streets and rights of way, except insofar as:

21 a. Lockheed has previously notified the City that ac-  
22 cess to particular segment(s) of such City streets or rights of  
23 way is necessary to perform the Remedial Design Work or Remedial  
24 Action Work, and such access has not been determined to be un-  
25 necessary to perform the Remedial Design Work or Remedial Action  
26 Work pursuant to the dispute resolution provisions of Section XX  
27 (Dispute Resolution); or

1           b. EPA has previously notified the City that access to  
2 particular segment(s) of such City streets or rights of way is  
3 necessary to perform or have a potentially responsible party per-  
4 form the tasks described in Subpart B of Section VII (Work To Be  
5 Performed) and such access has not been determined to be unneces-  
6 sary to perform the tasks described in Subpart B of Section VII  
7 (Work To Be Performed) pursuant to the dispute resolution provi-  
8 sions of Section XX (Dispute Resolution).

9           3. No change in ownership of Weber, property or assets  
10 owned by Weber or the corporate status of Weber, including but  
11 not limited to any transfer of real or personal property, shall  
12 alter EPA or Settling Defendants' rights and obligations under  
13 this Consent Decree, including access rights under this Decree.  
14 In the event that Weber transfers any of the real property it  
15 owns at either 2820 Ontario Street or 3000 North San Fernando  
16 Road in the City of Burbank prior to termination of this Decree  
17 pursuant to Section XXXIV (Termination and Satisfaction), Weber  
18 shall provide a copy of this Decree to the transferee prior to  
19 consummating the transaction and evidence such action by provid-  
20 ing a copy of its transmittal letter to EPA within ten (10) work-  
21 ing days of consummating the transaction.

22                           VII. WORK TO BE PERFORMED

23           A. The Work to be performed pursuant to this Consent Decree  
24 shall consist of the tasks described in Subparts A.1 through A.5,  
25 below.

26           1. The design and construction of all facilities necessary  
27 to:



1       a. extract 12,000 gallons per minute ("gpm") of groundwater  
2 from the Burbank Operable Unit Site;

3       b. treat the extracted groundwater to a level that does not  
4 exceed drinking water standards promulgated on or before January  
5 31, 1991 and still in effect at the time of the extraction, ex-  
6 cept the MCL for nitrate;

7       c. deliver 9,000 gpm of the treated water to the Point of  
8 Delivery;

9       d. reinject into the San Fernando Valley Groundwater Basin  
10 the treated water which is not accepted by the City at the Point  
11 of Delivery or discharged in compliance with Subpart F of this  
12 Section, up to the capacity limits established pursuant to the  
13 Statement of Work;

14       e. discharge any treated groundwater allowed to be dis-  
15 charged pursuant to Subpart F of this Section;

16       f. perform monitoring necessary to design, construct,  
17 operate and maintain the facilities described in Subparts A.1.a  
18 through A.1.e of this Section; and

19       g. monitor the effectiveness of the foregoing facilities in  
20 achieving the extraction, treatment and reinjection standards es-  
21 tablished by Subparts F and G of this Section.

22       2. The operation and maintenance of the facilities  
23 described in Subpart A.1 for the time periods specified in Sub-  
24 part E.

25       3. The design and construction of all facilities necessary  
26 to:

1           a. accept 9,000 gpm of treated groundwater at the Point of  
2 Delivery;

3           b. disinfect such treated groundwater;

4           c. transport the disinfected groundwater to the Valley  
5 Forebay Facility and from there to the Point of Interconnection;

6           d. perform monitoring necessary to design, construct,  
7 operate and maintain the facilities described in Subparts A.3.a  
8 through A.3.c; and

9           e. monitor the effectiveness of the foregoing facilities in  
10 achieving the disinfection standards established by Subpart G of  
11 this Section.

12           4. The operation and maintenance of the facilities  
13 described in Subpart A.3 for the time periods specified in Sub-  
14 part E.

15           5. The operation and routine maintenance (as described in  
16 the Statement of Work) of the facilities constructed pursuant to  
17 Subpart B.1 of this Section for the periods specified in Subpart  
18 E.

19           B. The Work does not include, and Settling Defendants have  
20 not agreed to perform, the following tasks:

21           1. The design and construction of all facilities necessary  
22 to:

23           a. receive 9,000 gpm of disinfected groundwater at the  
24 Point of Interconnection;

25           b. blend such disinfected groundwater with MWD supplied  
26 water ("blending water") to achieve a combined water supply in  
27 the amount of 18,000 gpm ("blended water");

1 c. transport the disinfected groundwater from the Point of  
2 Interconnection to the blending facilities;

3 d. transport 9,000 gpm of blending water from its MWD  
4 source to the blending facilities;

5 e. transport 18,000 gpm of blended water from the blending  
6 facilities to the Point of Water System Introduction;

7 f. perform monitoring necessary to design, construct,  
8 operate and maintain the facilities described in Subparts B.1.a  
9 through B.1.e; and

10 g. monitor the effectiveness of the foregoing facilities in  
11 achieving the blending standards established by Subpart H.1 of  
12 this Section.

13 2. The performance of any non-routine maintenance with  
14 respect to the facilities described in Subpart B.1 for the time  
15 period during which the Work is being performed.

16 C.1. Appendix E to this Decree, which is hereby incor-  
17 porated into this Decree by reference, consists of three  
18 schematics which set out in general the relationship between:

19 a. Some of the facilities to be designed, constructed,  
20 operated and maintained by each Settling Work Defendant pursuant  
21 to this Decree, and

22 b. Some of the facilities described in Subpart B of this  
23 Section.

24 2. In the case of any discrepancy between Appendix E and  
25 the Work as described in the rest of this Section or the tasks  
26 described in Subpart B of this Section, the wording of this Sec-  
27 tion shall prevail over Appendix E.

1       D.1. The City of Burbank shall be solely responsible for  
2 performing all of the Work required by Subparts A.3, A.4 and A.5  
3 of this Section, subject to reimbursement by Lockheed (in an  
4 amount not to exceed \$200,000) as provided in Section XII  
5 (Financial Assurance and Trust Accounts); and Lockheed shall be  
6 solely responsible for performing all other Work required by this  
7 Decree.

8       2. Lockheed and the City agree to coordinate performance of  
9 their respective portions of the Work with each other to ac-  
10 complish the timely and satisfactory completion of all of the  
11 Work.

12       3. EPA presently intends to seek to have the tasks  
13 described in Subpart B of this Section performed through enforce-  
14 ment actions or judicial settlements with potentially responsible  
15 parties ("PRPs"). These PRPs may consist of or include the Set-  
16 tling Defendants, pursuant to the reservation of EPA's enforce-  
17 ment authority in Subparts C and/or D of Section XVII  
18 (Reservation and Waiver of Rights), except insofar as EPA has  
19 agreed pursuant to Subpart D.2 of that Section not to pursue  
20 Weber or the City. If (a) person(s) other than the Settling  
21 Defendants perform(s) any of the tasks described in Subpart B,  
22 Lockheed and the City agree to coordinate performance of their  
23 respective portions of the Work with any tasks being performed by  
24 any other person(s) to accomplish the timely and satisfactory  
25 completion of the Work and the tasks described in Subpart B of  
26 this Section. Nothing in this Section shall preclude the United  
27 States from instituting proceedings in this action or in a new

1 action or issuing an order, pursuant to the reservations in Sub-  
2 parts C and/or D of Section XVII (Reservation and Waiver of  
3 Rights), seeking to compel Lockheed to perform the tasks  
4 described in Subpart B of this Section.

5 E. The Work shall be implemented, subject to EPA oversight  
6 and approval, pursuant to the schedule contained in and in accor-  
7 dance with the requirements of this Decree, the Statement of Work  
8 attached hereto as Appendix D and any schedule approved pursuant  
9 to these documents, which provides for the Work and the tasks  
10 described in Subpart B of this Section to be performed in the  
11 following phases:

12 1. During phase one, all facilities necessary to extract,  
13 treat and deliver 6,000 gpm of treated and disinfected  
14 groundwater to the blending facilities, 9,000 gpm of blending  
15 water to the blending facilities, and 18,000 gpm of blended water  
16 to the Point of Water System Introduction, to accept and blend  
17 the treated water and to monitor performance of the foregoing  
18 facilities shall be designed and constructed. These facilities  
19 shall be operated and maintained from the System Operation Date  
20 for phase one until the System Operation Date for phase two, ex-  
21 cept insofar as the Statement of Work permits otherwise.

22 2. During phase two, all facilities necessary to extract,  
23 treat and deliver an additional 3,000 gpm of treated and disin-  
24 fected groundwater to the blending facilities, to reinject  
25 treated groundwater which is not accepted by the City (such rein-  
26 jection capacity to consist of 5,500 gpm, unless EPA decides that  
27 more reinjection capacity is needed, pursuant to the provisions

1 in the Statement of Work) and to monitor performance of the new  
2 facilities, shall be designed and constructed. These facilities,  
3 and the facilities from phase one, shall be operated and main-  
4 tained from the System Operation Date for phase two until the  
5 System Operation Date for phase three, except insofar as the  
6 Statement of Work permits otherwise.

7 3. During phase three, all facilities necessary to extract,  
8 treat and reinject an additional 3,000 gpm of treated groundwater  
9 and to monitor performance of the new facilities, shall be  
10 designed and constructed. If EPA has determined, pursuant to the  
11 provisions of the Statement of Work, that more than an additional  
12 3,000 gpm of reinjection facilities are needed, such facilities  
13 shall also be constructed during phase three. All phase three  
14 facilities, and the facilities from phases one and two, shall be  
15 operated and maintained for a period of two years from the System  
16 Operation Date for phase three, except insofar as the Statement  
17 of Work permits otherwise; provided, however, that (1) if there  
18 is a suspension of the operation of the extraction and treatment  
19 system (including but not limited to any allowed by the Statement  
20 of Work), the time period of such suspension shall not be in-  
21 cluded in computing the two-year period during which all of the  
22 phase one, two and three facilities must be operated and (2) if  
23 the extraction, treatment and/or reinjection facilities are  
24 operating but are not meeting the standards required by Subpart G  
25 for such activities, the period of operation during which such  
26  
27

standards are not met shall not be included in computing the two-year period during which all of the phase one, two and three facilities must be operated.

F. This Subpart contains nonsignificant modifications to the remedy selected in the ROD and ESD. Settling Work Defendants agree to comply with the requirements of this Subpart in implementing the remedy, and also agree that these requirements constitute part of the Work.

1. Lockheed may discharge extracted water to any offsite conveyance(s) leading to a Publicly Owned Treatment Works ("POTW") or to any offsite conveyance(s) leading to any water(s) of the United States for a period of up to thirty (30) (not necessarily consecutive) days between the System Operation Date for any phase and sixty days after that System Operation Date, provided that the following requirements are met:

a. All substantive and procedural requirements applicable to such discharge at the time of such discharge shall be met, including any limits on the quantity of water to be discharged;

b. The total combined amount of any discharge(s) of extracted water to any offsite conveyance(s) leading to any POTW(s) at any time shall not exceed 6,000 gpm; and

c. The total combined amount of extracted water discharged to any offsite conveyance(s) leading to any POTW(s) and to any offsite conveyance(s) leading to any water(s) of the United States at any time shall not exceed 12,000 gpm.

1           2. Lockheed may discharge extracted water to any offsite  
2 conveyance(s) leading to any Publicly Owned Treatment Works  
3 ("POTW") or to any offsite conveyance(s) leading to any water(s)  
4 of the United States for a period of up to five (not necessarily  
5 consecutive) days during any month other than the sixty days fol-  
6 lowing each phase's System Operation Date, if the water is not  
7 accepted by the City and cannot be reinjected, provided that the  
8 requirements of Subparts F.1.a through F.1.c of this Section are  
9 met for such discharge. Nothing in this Subpart shall excuse  
10 Lockheed from stipulated penalties for failure to comply with any  
11 other requirements of this Decree, including but not limited to  
12 the requirement to construct reinjection capacity as required by  
13 this Decree.

14           3. Lockheed may discharge development and purge water from  
15 wells to any offsite conveyance(s) leading to a Publicly Owned  
16 Treatment Works ("POTW") or to any offsite conveyance(s) leading  
17 to any water(s) of the United States, provided that any such dis-  
18 charge is in compliance with all substantive and procedural re-  
19 quirements applicable to such discharge at the time of such dis-  
20 charge. Water discharged pursuant to this Subpart F.3 shall not  
21 be included in the limits on the amount of water allowed to be  
22 discharged pursuant to Subparts F.1.b, F.1.c and F.2 of this Sec-  
23 tion.

24           4. Any water containing hazardous constituents and stored  
25 onsite for more than ninety days shall be handled as a hazardous  
26 waste onsite. Such storage shall be accomplished in compliance  
27 with the substantive requirements of 40 C.F.R. Part 264, Subparts



1 I and J, and 22 California Code of Regulations, Chapter 30, Ar-  
2 ticle 24 ("Use and Management of Containers") and Article 25  
3 ("Tank Systems"). These requirements are applicable or relevant  
4 and appropriate requirements for the Remedial Action Work.

5 5. With respect to requirements for the operation of the  
6 groundwater Treatment Plant's VOC-stripper (i.e., air stripper  
7 with vapor phase granulated activated carbon absorption units  
8 and/or steam stripper), South Coast Air Quality Management Dis-  
9 trict ("SCAQMD") Rule 1167 was rescinded in December of 1988 and  
10 Settling Work Defendants are not required to comply with this  
11 Rule despite any other language in this Decree. Furthermore,  
12 some of the regulations cited in the ROD have been changed by the  
13 SCAQMD. The only requirements of the SCAQMD that Lockheed is re-  
14 quired to comply with in performing Work onsite are the substan-  
15 tive requirements of the following applicable or relevant and ap-  
16 propriate requirements for the groundwater Treatment Plant (i.e.,  
17 air stripper with vapor phase granulated activated carbon ("GAC")  
18 absorption units and/or steam stripper):

19 a. SCAQMD Regulation XIII, as amended through June 28,  
20 1990; and

21 b. SCAQMD Rule 1401, as adopted on June 1, 1990.

22 G. The Work to be performed shall, at a minimum, achieve  
23 the following standards during system operation:

24 1. All groundwater to be extracted shall be treated by  
25 Lockheed to a level that does not exceed drinking water standards  
26 (other than the MCL for nitrate), including secondary drinking  
27

1 water standards, in effect at the time of the extraction,  
2 provided that such standards were promulgated by EPA or the State  
3 on or before January 31, 1991. These drinking water  
4 standards include, but are not limited to, the following chemi-  
5 cals and MCLs:

6 Chemical

MCL

7 PCE

5.0 micrograms/liter

8 TCE

5.0 micrograms/liter

9 2. All extracted groundwater reinjected by Lockheed shall  
10 meet the following requirements:

11 a. Compliance with RCRA Section 3020;

12 b. All drinking water standards (other than the MCL for  
13 nitrate) in effect at the time of such reinjection,  
14 provided such standards were promulgated by EPA or the  
15 State on or before January 31, 1991; and

16 c. Nitrate levels that comply with the Los Angeles River  
17 Basin Plan, including the State Water Resources Control  
18 Board Resolution No. 68-16, "Statement of Policy with  
19 Respect to Maintaining High Quality of Waters in  
20 California." See Los Angeles River Basin Plan 4B,  
21 Chapter 4, Pages I-4-2 to I-4-3.

22 3. All treated groundwater that is accepted at the Point of  
23 Delivery shall be disinfected and then blended by the City to  
24 meet all legal requirements for introduction of the blended water  
25 into the City's water supply system, including, but not limited  
26 to, the MCL for nitrate.

1           4. In order to prevent any reduction in the overflow eleva-  
2   tion (high water level) of the Valley Forebay Facility, Lockheed  
3   shall provide treated groundwater at pressure sufficient to  
4   enable its physical movement from the Point of Delivery to the  
5   Valley Forebay Facility.

6           5. In extracting groundwater in the amounts required by  
7   this Decree, Lockheed shall extract from the most VOC-  
8   contaminated zones of the aquifer.

9           6. Lockheed shall design, construct, operate and maintain  
10   the facilities it is required to design, construct, operate and  
11   maintain in such a way as to ensure that delivery of water to the  
12   Point of Delivery that does not meet the drinking water standards  
13   promulgated and in effect on the date of delivery (other than the  
14   MCL for nitrate), regardless of when any such standards were  
15   promulgated, shall result in the immediate, and, in all cases  
16   where possible, automatic shut-down of the groundwater Treatment  
17   Plant and water delivery system. Such a shut-down shall not, in  
18   and of itself, release Lockheed from any other requirement of  
19   this Decree and specifically shall not, in and of itself, affect  
20   the requirement that Lockheed pay stipulated penalties for  
21   failure to deliver water to the Point of Delivery in the amounts  
22   and of the quality required by this Decree.

23          H.1. The City shall accept all treated groundwater provided  
24   by Lockheed at the Point of Delivery which satisfies the treat-  
25   ment standards established by Subpart G of this Section up to an  
26   amount which, when blended with the blending water, will meet the  
27   City's Monthly Average Minimum Day Water Demand (as defined in

1 the Statement of Work) without resulting in a nitrate concentra-  
2 tion in the blended water that exceeds the promulgated MCL for  
3 nitrate in effect at that time; provided however that, in order  
4 to maximize the City's use of treated groundwater while providing  
5 a margin of safety in achieving compliance with the MCL for  
6 nitrate, the City shall be deemed to be in compliance with this  
7 Subpart if it:

8 a. Maximizes the use of blended water to meet the City's  
9 Monthly Average Minimum Day Water Demand and the level of nitrate  
10 in the blended water is between sixty-seven percent (67%) and  
11 eighty-nine percent (89%) of the promulgated MCL for nitrate that  
12 is in effect at the time of the blending at all times when the  
13 nitrate level in the treated groundwater supplied by Lockheed ex-  
14 ceeds sixty-seven percent (67%) of the MCL for nitrate promul-  
15 gated and in effect at the time the water is delivered to the  
16 City, and

17 b. Maximizes the use of unblended treated groundwater sup-  
18 plied by Lockheed to meet the City's Average Minimum Day Water  
19 Demand at all times when the nitrate level in the treated  
20 groundwater is below sixty-seven percent (67%) of the promulgated  
21 MCL for nitrate in effect at the time the water is delivered to  
22 the City.

23 2. Notwithstanding the requirements of Subpart H.1 of this  
24 Section, the City shall not be charged a stipulated penalty for  
25 failure to meet a nitrate level specified in that Subpart unless  
26  
27

1 the nitrate concentrations of the blended water exceed the  
2 promulgated MCL for nitrate in effect at the time of the blend-  
3 ing.

4 3. The acceptance of water by the City shall consist of en-  
5 suring the physical movement of treated water which is delivered  
6 to the Point of Delivery to the first measurable point beyond the  
7 Point of Delivery.

8 4. Lockheed shall extract, treat and deliver groundwater to  
9 the City at the Point of Delivery that satisfies the treatment  
10 standards established by Subpart G of this Section in an amount  
11 which satisfies the requirements of Subpart E of this Section, as  
12 limited by the amount of water the City is required to accept  
13 pursuant to Subpart H.1 of this Section. Lockheed shall extract,  
14 treat and reinject or discharge, in compliance with Subparts F  
15 and G of this Section, additional groundwater such that the total  
16 amount of water extracted, treated and then delivered to the  
17 City, reinjected or discharged equals or exceeds the level of  
18 groundwater extraction and treatment Lockheed is required, pur-  
19 suant to Subpart E, to accomplish during the applicable phase.

20 I,1. If Lockheed is not delivering treated groundwater to  
21 the Point of Delivery which meets the promulgated drinking water  
22 standards, including primary and secondary drinking water stan-  
23 dards, in effect at the time the water is delivered (other than  
24 the MCL for nitrate), the City shall not be obligated to meet the  
25 operation requirements of Subpart A.4 and A.5 of this Section.

26 2. Lockheed shall not be obligated to meet the requirements  
27 of Subpart H.4 of this Section if:

1       a. The City is not accepting treated groundwater at the  
2 Point of Delivery which it is required to take from Lockheed by  
3 Subpart H.1 of this Section; or

4       b. A new drinking water standard is promulgated after  
5 January 31, 1991, EPA has identified such standard as applicable  
6 or relevant and appropriate for the treated groundwater and  
7 necessary to protect public health or the environment and such  
8 standard cannot be met without modifying the facilities to be  
9 constructed pursuant to Subpart A of this Section or changing  
10 their operation;

11       J. Commencing on the System Operation Date for phase one of  
12 the Work, Lockheed shall, at a minimum, sample and analyze the  
13 treated groundwater from the groundwater Treatment Plant no less  
14 often than weekly using EPA Method 502.2 or an alternative method  
15 approved by EPA in writing. Lockheed shall also perform all sam-  
16 pling and analysis it is required to perform pursuant to the  
17 Statement of Work. For purposes of this Consent Decree, a given  
18 sample of treated groundwater shall be considered representative  
19 of treated groundwater from the groundwater Treatment Plant from  
20 the time the given sample was taken until the time at which the  
21 next sample is taken; provided, however, that a given sample of  
22 treated groundwater shall only be considered representative for  
23 times during which the groundwater Treatment Plant is operating.

24       K. The Work shall be performed in accordance with the  
25 Decree, including the terms, standards and specifications set  
26 forth in this Section, in the Statement of Work and in any  
27 deliverables approved by EPA pursuant to such documents.

1        L. None of the Settling Parties has agreed, pursuant to  
2 this Decree, to decommission or dismantle the blending facility  
3 or groundwater Treatment Plant to be constructed as part of the  
4 Work, and this Decree shall not be construed as an agreement by  
5 any Settling Party to perform such actions.

6        M.1. The onsite Remedial Action Work, as designed, shall  
7 meet the substantive standards of all "applicable requirements"  
8 and "relevant and appropriate requirements," as those terms are  
9 defined in CERCLA Section 121(d), 42 U.S.C. § 9621 (d) and 40  
10 C.F.R. § 300.6, that are identified in the ROD as modified by the  
11 ESD and Subpart F of this Section.

12        2. If any new requirement(s) are promulgated or any  
13 requirement(s) promulgated on or before January 31, 1991 are  
14 changed at any time after this Consent Decree is signed, EPA  
15 shall determine (pursuant to 40 C.F.R. § 300.430(f)(1)(ii)(b)(1))  
16 whether or not the requirements(s) are (a) applicable or relevant  
17 and appropriate, and (b) necessary to ensure that the remedy is  
18 protective of human health and the environment. For any  
19 requirement(s) that EPA determines meet both criteria, EPA will  
20 seek to negotiate with Settling Defendants to amend the Consent  
21 Decree (including the Statement of Work) to ensure that the Work  
22 will comply with the new or changed requirement(s). However, in  
23 signing this Consent Decree, Settling Defendants have not agreed  
24 to meet any such new or changed requirement(s). EPA reserves the  
25 right to stop performance of the Work if Settling Defendants do  
26 not agree to meet such new or changed requirement(s). If EPA  
27 stops the Work pursuant to this Section, Lockheed and the City

1 shall not be deemed to have violated the Consent Decree for  
2 failure to perform the Work. Lockheed and the City shall also  
3 not be entitled to a Covenant Not To Sue for any Work performed  
4 prior to the date that EPA stopped performance of the Work pur-  
5 suant to this Section. Nothing in this Section shall preclude  
6 the United States from instituting proceedings in this action or  
7 a new action or issuing an order pursuant to Subpart D of Section  
8 XVIII (Covenant Not To Sue), seeking to compel the Settling  
9 Defendants to meet the new or changed Requirement(s).

10 N. The City may, at its sole option, monitor the treated  
11 groundwater received at the Point of Delivery. In performing any  
12 such monitoring, the City shall comply with the requirements of  
13 Section VIII (Quality Assurance).

14 O. If EPA decides to operate and maintain the extraction,  
15 treatment and reinjection facilities constructed pursuant to Sub-  
16 part A of this Section after the Work required by this Decree is  
17 completed, or to have a person(s) other than Lockheed or EPA do  
18 so, Lockheed shall cooperate with EPA and/or the other person(s)  
19 with respect to the continuing operation of such facilities.  
20 Such cooperation shall include, but not be limited to: (1)  
21 training personnel in plant operation and maintenance; (2)  
22 providing necessary technical information; (3) reviewing and com-  
23 menting on operating plans and procedures; (4) providing access  
24 to the plant and any related facilities (including reinjection  
25 facilities); and (5) maintaining and providing copies of the  
26 groundwater Treatment Plant design specifications, daily log,  
27 repair log, operation manuals, and any other records or documents



1 prepared by Lockheed related to the facilities. Lockheed's  
2 obligations pursuant to this Subpart shall not include an obliga-  
3 tion to pay any  
4 Future Response Costs incurred by the United States during the  
5 period of cooperation.

6 P. All Remedial Design Work to be performed by Settling  
7 Work Defendants pursuant to this Consent Decree shall be under  
8 the direction and supervision of (a) qualified professional  
9 architect(s)/engineer(s). Settling Work Defendants may use one  
10 qualified professional architect/engineer, or each may select its  
11 own architect/engineer, to direct and supervise that portion of  
12 the Remedial Design Work to be performed by it. At least ten  
13 (10) days prior to the initiation of the Remedial Design Work,  
14 Settling Work Defendants shall notify EPA in writing of the name,  
15 title, and qualifications of the architect(s)/engineer(s)  
16 proposed to supervise and direct the Remedial Design Work to be  
17 performed by it pursuant to this Consent Decree. Selection of  
18 any such architect(s)/engineer(s) shall be subject to disapproval  
19 by EPA. If at any time after making their selection(s), (a) Set-  
20 tling Work Defendant(s)s propose(s) to change (a) professional  
21 architect(s)/engineer(s) directing and supervising Remedial  
22 Design Work, the Settling Work Defendant(s) shall give written  
23 notice to EPA. Any such change shall be subject to disapproval  
24 by EPA. If EPA disapproves of an architect/engineer proposed by  
25 (a) Settling Work Defendant(s) pursuant to this Subpart, EPA  
26 shall state in writing the reasons for such disapproval.

1           Q. All Remedial Action Work to be performed by Settling  
2 Work Defendants pursuant to this Consent Decree shall be under  
3 the direction and supervision of (a) qualified professional  
4 engineer(s). Settling Work Defendants may use one qualified  
5 professional engineer, or each may select its own engineer, to  
6 direct and supervise that portion of the Remedial Action Work to  
7 be performed by it pursuant to this Consent Decree. At least  
8 thirty (30) days prior to the initiation of Remedial Action Work  
9 at the Site, (a) Settling Work Defendant(s) shall notify EPA in  
10 writing of the name, title, and qualifications of the proposed  
11 engineer(s), and the names of the principal contractors and/or  
12 subcontractors (including laboratories) proposed to be used in  
13 carrying out the Remedial Action Work to be performed pursuant to  
14 this Consent Decree. Selection of any such engineer, contractor,  
15 or subcontractor shall be subject to disapproval by EPA. If at  
16 any time thereafter (a) Settling Work Defendant(s) propose(s) to  
17 change professional engineers directing and supervising Remedial  
18 Action Work, the Settling Work Defendant(s) shall give written  
19 notice to EPA. Any such change shall be subject to disapproval  
20 by EPA. If EPA disapproves of an engineer proposed by (a) Set-  
21 tling Work Defendant(s) pursuant to this Subpart, EPA shall state  
22 in writing the reasons for such disapproval.

23           R. The Statement of Work shall not be amended without the  
24 mutual written agreement of the Settling Work Defendant(s) af-  
25 fected by the modification and EPA, as provided for in Section  
26  
27

1 XXIV (Modification). This limitation on amending the Statement  
2 of Work shall not act to limit EPA's rights pursuant to Subpart B  
3 of Section XVII (Reservation and Waiver of Rights).

4 S. Documents to be submitted:

5 1. Deliverables: Each Settling Work Defendant shall  
6 prepare and submit those deliverables which that Settling Work  
7 Defendant is required to submit by the Statement of Work, as that  
8 document may be from time to time amended in accordance with Sec-  
9 tion XXIV (Modification).

10 2. Monthly Progress Reports: Each Settling Work  
11 Defendant shall provide written progress reports to EPA on a  
12 monthly basis. These progress reports shall describe the actions  
13 taken by that Settling Work Defendant to comply with this Consent  
14 Decree, including a general description of activities commenced  
15 or completed during the reporting period, Remedial Action Work  
16 activities projected to be commenced or completed during the next  
17 reporting period, any significant problems that have been encoun-  
18 tered or are anticipated by that Settling Work Defendant in per-  
19 forming the Work activities and that Settling Work Defendant's  
20 recommended solutions, and the results of any sampling, tests, or  
21 other data required by the Decree (including the Statement of  
22 Work). Analytical sampling results shall be reported within the  
23 time periods specified in Section XI (Submission of Documents, .  
24 Sampling and Analytic Data). Each Settling Work Defendant shall  
25 include any data required by the Decree (including the Statement  
26 of Work) other than analytical sampling results in the Monthly  
27 Progress Report for the month immediately following the month in

1 which that Settling Work Defendant or its representatives genera-  
2 ted or acquired such data. These progress reports shall also in-  
3 clude any specific information which the Statement of Work re-  
4 quires be included in them. These progress reports shall be sub-  
5 mitted to EPA by the 10th day of each month for Work done the  
6 preceding month and planned for the current month.

7           3. Quarterly Quality Assurance Reports: The Settling  
8 Work Defendants shall each include a quality assurance report to  
9 EPA as part of its monthly reports for the months of January,  
10 April, July and October of each year. Such reports shall contain  
11 information that demonstrates that Settling Work Defendant's com-  
12 pliance with Section VIII (Quality Assurance), including but not  
13 limited to any specific information which the Statement of Work  
14 required be included in them.

15           T. Settling Work Defendants shall submit a draft and a  
16 final of each of the deliverables they are required to submit  
17 (except the monthly progress reports and the quarterly quality  
18 assurance reports). Any failure by Settling Work Defendants to  
19 submit a draft or final deliverable in compliance with the  
20 schedule set forth in the Statement of Work shall be deemed a  
21 violation of this Decree.

22           U. EPA shall review any deliverable Settling Work Defen-  
23 dants are required to submit for approval and shall: (1) ap-  
24 prove, in whole or in part, the deliverable; (2) disapprove, in  
25 whole or in part, the deliverable, notifying the submitting Set-  
26 tling Work Defendant of the deficiencies; (3) direct the Settling  
27 Work Defendant that submitted the deliverable to modify the

1 deliverable; (4) approve the deliverable with specified condi-  
2 tions; (5) modify the deliverable to cure the deficiencies; or  
3 (6) any combination of the above; provided, however, that EPA  
4 may not use this review and approval process to expand the Work  
5 beyond that which each Settling Work Defendant has agreed to per-  
6 form pursuant to this Decree.

7 V. In the event of approval, approval upon conditions, or  
8 modification by EPA, Settling Work Defendants shall proceed to  
9 take any action required by the deliverable, as approved or  
10 modified by EPA, subject only to Settling Work Defendants' right  
11 to invoke dispute resolution pursuant to Section XX (Dispute  
12 Resolution).

13 W. Upon receipt of a notice of disapproval or a notice re-  
14 quiring a modification, the Settling Work Defendant that sub-  
15 mitted the deliverable shall, within ten (10) working days or  
16 such other longer period of time as specified by EPA in such  
17 notice, correct the deficiencies and resubmit the deliverable for  
18 approval. Notwithstanding the notice of disapproval, the Set-  
19 tling Work Defendant shall proceed, at the direction of EPA, to  
20 take any action required by the non-deficient portion of the  
21 deliverable. Implementation of non-deficient portions of a  
22 deliverable shall not relieve a Settling Work Defendant of its  
23 liability pursuant to Section XIX (Stipulated Penalties) for  
24 stipulated penalties for submitting a deficient deliverable.

25 X. If, upon resubmission, a deliverable or portion thereof  
26 is still deficient, the Settling Work Defendant that submitted  
27 the deliverable shall be deemed to be in violation of this Con-

1 sent Decree. If a resubmitted deliverable is disapproved by EPA,  
2 EPA may again take any of the actions described in Subpart U of  
3 this Section.

4 Y. Settling Work Defendants acknowledge and agree that  
5 neither this Consent Decree nor any approvals or permits issued  
6 by EPA or any other government entity shall be deemed a warranty  
7 or representation, either express or implied, by the United  
8 States that the activities thereby approved will result in  
9 achievement of the performance standards which this Decree re-  
10 quires Settling Work Defendants to meet. EPA has exercised its  
11 best efforts to include in the Statement of Work all activities  
12 necessary to fulfill the requirements of the Remedial Design Work  
13 and the Remedial Action Work. However, the Settling Parties ac-  
14 knowledge and agree that nothing in this Consent Decree  
15 (including the Statement of Work) or any deliverables submitted  
16 pursuant thereto constitutes a warranty or representation, either  
17 express or implied, by the United States that compliance with the  
18 Statement of Work and/or any deliverables approved by EPA will  
19 result in achievement of the performance standards that this  
20 Decree requires the Settling Work Defendants to meet, and that  
21 such compliance shall not foreclose the United States from seek-  
22 ing compliance with all terms and conditions of this Decree in-  
23 cluding, but not limited to, the performance standards of this  
24 Section.

25 Z. EPA Performance of the Work: In the event that EPA  
26 determines that a Settling Work Defendant fails to perform, in an  
27 adequate or timely manner, the Work it is required to perform

1 pursuant to this Decree, EPA may elect to perform a portion or  
2 all of the Work which that Settling Work Defendant is required to  
perform pursuant to this Decree, as EPA determines necessary.

4 Except as is necessary to address an imminent and substantial en-  
5 dangerment to human health or the environment, EPA shall provide  
6 Settling Work Defendants with ten (10) days written notice of its  
7 intent to perform a portion or all of the Work. In the notice,  
8 EPA shall also describe the alleged deficiency.

9 AA. If the Settling Work Defendant required to perform the  
10 Work which EPA is taking over disagrees with EPA's determination  
11 that that Settling Work Defendant has failed to perform, in an  
12 adequate and timely manner, the Work it is required to perform by  
13 this Decree and that Settling Work Defendant desires to dispute  
14 EPA's determination in this regard, that Settling Work Defendant  
15 shall invoke the dispute resolution provisions of Section XX  
(Dispute Resolution) within thirty (30) days of receiving written  
17 notice of EPA's intent. Invocation of dispute resolution shall  
18 not divest EPA of its right to perform the Work during the dis-  
19 pute. Upon receipt of notification that EPA intends to take over  
20 the performance of a portion or all of the Work, that Settling  
21 Work Defendant's obligation to perform such Work pursuant to this  
22 Decree shall terminate. If EPA elects to perform the Work which  
23 a Settling Work Defendant is required to perform pursuant to this  
24 Decree, that Settling Work Defendant shall pay a Work Assumption  
25 Penalty as provided in Subpart I of Section XIX (Stipulated  
26 Penalties) and all other obligations of that Settling Work Defen-  
27 dant to pay stipulated penalties for any portion of the Work

1 taken over by EPA shall be terminated upon receipt of EPA's  
2 notice, except that payment of the Work Assumption penalty shall  
3 be in addition to any stipulated penalties which accrued prior to  
4 that Settling Work Defendant's receipt of EPA's notice of intent  
5 to take over all or a portion of the Work. A takeover of Work by  
6 EPA shall not affect Lockheed's obligation to pay Future Response  
7 Costs pursuant to Section XVI (Reimbursement of Future Response  
8 Costs).

9 VIII. QUALITY ASSURANCE

10 A. Each Settling Work Defendant shall submit to EPA for ap-  
11 proval, in accordance with the schedule contained in the State-  
12 ment of Work, comprehensive Quality Assurance ("QA") Project  
13 Plan(s) for all Work to be performed by that Settling Work Defen-  
14 dant pursuant to this Decree. The QA Project Plan(s) shall,  
15 where applicable, be prepared in accordance with U.S. EPA Interim  
16 Guidelines & Specifications for Preparing QA Project Plans -  
17 OAMS 055/80 (U.S. EPA December 1980) and U.S. EPA Region IX  
18 Guidance for Preparing QA Project Plans for Superfund Remedial  
19 Projects, Doc. 90A-03-89 (September, 1989), and any superseding  
20 or amended version of these documents provided by EPA to the Set-  
21 tling Work Defendants. Upon receipt of EPA's approval of each  
22 Final QA Project Plan, the Settling Work Defendant that submitted  
23 the plan shall immediately implement the QA Project Plan.

24 B. Settling Work Defendants shall use QA procedures and  
25 protocols in accordance with the QA Project Plan(s) approved pur-  
26 suant to Subpart A of this Section, and shall utilize standard  
27 EPA sample chain of custody procedures, as documented in the Na-



1 tional Enforcement Investigations Center Policies and Procedures  
2 Manual as revised in May 1986 and any amended or superseding ver-  
3 sion of this document provided by EPA to the Settling Work Defen-  
4 dants, and the National Enforcement Investigations Center Manual  
5 for the Evidence Audit, published in September 1981 and any  
6 amended or superseding version of this document provided by EPA  
7 to the Settling Work Defendants, for all sample collection and  
8 analysis activities conducted pursuant to this Decree.

9 C. In order to provide quality assurance and maintain  
10 quality control regarding all samples collected pursuant to this  
11 Decree, each Settling Work Defendant shall:

12 1. Ensure that all contracts with laboratories utilized by  
13 that Settling Work Defendant for analysis of samples taken pur-  
14 suant to this Consent Decree provide for access of EPA personnel  
15 and EPA-authorized representatives to assure the accuracy of  
16 laboratory results obtained pursuant to this Decree.

17 2. Ensure that all laboratories utilized by that Settling  
18 Work Defendant for analysis of samples taken pursuant to this  
19 Consent Decree perform all analyses according to the approved QA  
20 Project Plan(s).

21 3. Ensure that all laboratories utilized by that Settling  
22 Work Defendant for analysis of samples taken pursuant to this  
23 Decree participate in an EPA or EPA-equivalent Laboratory Water  
24 Supply Performance Evaluation Study. As part of the QA program  
25 and upon request by EPA, such laboratories shall perform, at that  
26 Settling Work Defendant's expense, analyses of samples provided  
27

1 by EPA to demonstrate the quality of each laboratory's data. EPA  
2 may provide to each laboratory a maximum of ten (10) samples per  
3 year per analytical combination.

4 4. Ensure that all laboratories utilized by that Settling  
5 Work Defendant for analysis of samples taken pursuant to this  
6 Decree follow EPA procedures in order for data validation to be  
7 accomplished as outlined in U.S. EPA Region IX, Laboratory  
8 Documentation Requirements for Data Validation (January, 1990),  
9 the Laboratory Data Validation Functional Guidelines for Evaluat-  
10 ing Inorganic Analysis, Draft (July, 1988), the Laboratory Data  
11 Validation Functional Guidelines for Evaluating Organic Analysis,  
12 Draft (February, 1988) and any amended or superseding version of  
13 these documents provided by EPA to that Settling Work Defendant.

14 5. Agree not to contest EPA's authority to conduct field  
15 audits to verify compliance by that Settling Work Defendant with  
16 the requirements of this Section.

17 D. Each Settling Work Defendant shall require by contract  
18 and use its best reasonable efforts to ensure that samples taken  
19 on that Settling Work Defendant's behalf for purposes of im-  
20 plementing this Decree are retained and disposed of by analytical  
21 laboratories in accordance with EPA's customary contract proce-  
22 dures for sample retention, as outlined in the Contract  
23 Laboratory Project Statement of Work for Organics (October,  
24 1986), Contract Laboratory Project Statement of Work for Inor-  
25 ganics (July 1987) and any amendments to or superseding versions  
26 of these documents provided by EPA to that Settling Work Defen-  
27 dant. If a laboratory fails to retain and dispose of samples as

1 required by its contract with a Settling Work Defendant, EPA and  
2 that Settling Work Defendant shall confer to determine whether  
3 the laboratory should continue to perform analytical work re-  
4 quired by this Consent Decree. At EPA's written request stating  
5 the reasons therefor, the Settling Work Defendant shall discon-  
6 tinue use of the laboratory.

7 E. Notwithstanding the other Subparts of this Section, the  
8 City may substitute other quality assurance procedures for some  
9 or all of the procedures required by this Section if EPA issues a  
10 written determination to both Settling Work Defendants that such  
11 other procedures and the supporting documentation generated by  
12 the City are sufficiently similar to the requirements of this  
13 Section and any related reporting requirements for which such  
14 procedures and reporting requirements would be substituted that  
15 EPA is satisfied with such procedures as a substitute for some or  
16 all of the requirements of this Section and related reporting re-  
17 quirements. If at any time after issuing such a determination  
18 EPA decides that the City should again comply with all of the  
19 procedures of this Section, the City shall do so within thirty  
20 (30) days of receipt of EPA's written determination to this ef-  
21 fect, containing the reasons for EPA's decision.

#### 22 IX. PROJECT COORDINATORS

23 A. Within fifteen days of the effective date of this  
24 Decree, EPA, Lockheed and the City shall each designate a Project  
25 Coordinator to monitor the progress of the Work and to coordinate  
26 communication among the Settling Parties.

1        B. EPA's Project Coordinator will be an EPA employee and  
2 shall have the authority vested in the On-Scene Coordinator by 40  
3 C.F.R. § 300 et seq., including such authority as may be added by  
4 amendments to 40 C.F.R. Part 300. EPA's Project Coordinator  
5 shall have the authority, inter alia, to require cessation of the  
6 performance of the Remedial Action Work or any other activity at  
7 the Site that, in the opinion of EPA's Project Coordinator, may  
8 present or contribute to an endangerment to public health, wel-  
9 fare, or the environment or cause or threaten to cause the  
10 release of hazardous substances from the Site. In the event that  
11 the EPA Project Coordinator suspends the Remedial Action Work of  
12 a Settling Work Defendant or any other activity at the Site, the  
13 EPA shall extend the schedule for that Settling Work Defendant's  
14 Remedial Action Work for the amount of time necessary to allow  
15 completion of any of that Settling Work Defendant's Remedial Ac-  
16 tion Work affected by such delay, provided that the original  
17 reason for the suspension was not due primarily to the acts or  
18 omissions of that Settling Work Defendant or its representatives.  
19 If EPA suspends the Remedial Action Work of one Settling Work  
20 Defendant and such suspension affects the Remedial Action Work of  
21 the second Settling Work Defendant, EPA shall extend the schedule  
22 for the second Settling Work Defendant's Remedial Action Work for  
23 the amount of time necessary to allow completion of any of that  
24 Settling Work Defendant's Remedial Action Work affected by such  
25 delay, provided that the original reason for the suspension was  
26 not due primarily to the acts or omissions of the second Settling  
27 Work Defendant or its representatives.

1       C. If a Settling Work Defendant disagrees with EPA's deter-  
2 mination regarding the appropriateness of or the amount of time  
3 necessary for any extension authorized pursuant to Subpart B of  
4 this Section, that Settling Work Defendant may invoke the dispute  
5 resolution procedures of Section XX (Dispute Resolution).

6       D. The absence of EPA's Project Coordinator from the Site  
7 shall not be cause for stoppage of the Work.

8       E. A Settling Work Defendant or EPA may change its Project  
9 Coordinator by notifying the other Settling Parties in writing at  
10 least seven days prior to the change.

11       F. Each Settling Work Defendant's Project Coordinator may  
12 assign another representative, including a contractor, to serve  
13 as a Site representative for oversight of that Settling Work  
14 Defendant's daily operations during performance of the Work.

15       G. EPA's Project Coordinator may assign another representa-  
16 tive, including another EPA employee or contractor, to serve as a  
17 Site representative for oversight of daily operations during per-  
18 formance of the Work. Such representative shall not have the  
19 powers of the Project Coordinator to require a cessation of the  
20 performance of the Remedial Action Work or any other activity at  
21 the Site unless such representative is also an EPA employee with  
22 the authority vested in the On-Scene Coordinator by 40 C.F.R. §  
23 300 et seq. and amendments thereto.

#### 24                   X. SITE ACCESS

25       A. To the extent that Lockheed requires access to or ease-  
26 ments over property (other than property it owns or controls or  
27 to which it is provided access pursuant to this Decree) for the

1 proper and complete performance of the Work, Lockheed shall use  
2 its best reasonable efforts to obtain access agreements from the  
3 owners or those persons who have control of such property. For  
4 purposes of this paragraph, "best reasonable efforts" shall in-  
5 clude the payment of reasonable sums of money in consideration of  
6 access. Lockheed shall obtain the required access agreements by  
7 the following time periods:

8 1. For access needed by Lockheed prior to the start of  
9 remedial construction, access agreements shall be obtained by a  
10 date fifty (50) days prior to the date access is needed.

11 2. For access needed by Lockheed for remedial construction,  
12 access agreements shall be obtained at least fifty (50) days  
13 prior to the start of remedial construction.

14 3. If EPA identifies to Lockheed in writing additional ac-  
15 cess (beyond that access previously secured) which is required  
16 for the proper and complete performance by Lockheed of its re-  
17 quirements under this Decree, access agreements shall be obtained  
18 within fifty (50) days of EPA providing such identification in  
19 writing.

20 B. To the extent that the City requires access to or ease-  
21 ments over property (other than property it owns or controls or  
22 to which it is provided access pursuant to this Decree) for the  
23 proper and complete performance of the Work, the City shall use  
24 its best reasonable efforts to obtain access agreements from the  
25 owners or those persons who have control of such property. For  
26 purposes of this paragraph, "best reasonable efforts" shall in-  
27

1 clude the payment of reasonable sums of money in consideration of  
2 access. The City shall obtain the required access agreements by  
3 the following time periods:

4 1. For access needed by the City prior to the start of  
5 remedial construction, access agreements shall be obtained by a  
6 date fifty (50) days prior to the date access is needed.

7 2. For access needed by the City for remedial construction,  
8 access agreements shall be obtained at least fifty (50) days  
9 prior to the start of remedial construction.

10 3. If EPA identifies to the City in writing additional ac-  
11 cess (beyond that access previously secured) which is required  
12 for the proper and complete performance by the City of its re-  
13 quirements under this Decree, access agreements shall be obtained  
14 within fifty (50) days of EPA providing such identification in  
15 writing. In the event the City acquires property pursuant to  
16 this Subpart, which acquisition is necessary for the purpose of  
17 conducting remedial action, the City shall be entitled to the  
18 protection granted by Section 104(j)(3) of CERCLA, 42 U.S.C. §  
19 9604(j)(3).

20 C. In the event that a Settling Work Defendant is unable to  
21 obtain an access agreement within the time periods specified in  
22 Subpart A or B of this Section, the Settling Work Defendant re-  
23 quired to obtain such an agreement shall notify EPA regarding the  
24 lack of such agreements within five (5) days after the end of the  
25 period specified for the attainment of such access agreements in  
26 Subpart A or B of this Section and shall include in that  
27 notification a summary of the steps which that Settling Work

1 Defendant has taken to attempt to obtain access. Inability to  
2 obtain a required access agreement, if the Settling Work Defen-  
3 dant used its best reasonable efforts to obtain such agreement  
4 and has otherwise complied with the requirements of this Section,  
5 shall constitute a force majeure event and shall be subject to  
6 the provisions of Section XXI (Force Majeure). If the United  
7 States must obtain access on behalf of Settling Work Defendants,  
8 any costs incurred in obtaining such access (including but not  
9 limited to attorneys' fees and other legal costs) shall be  
10 treated as Future Response Costs to be reimbursed by Lockheed as  
11 provided in Section XVI (Reimbursement of Future Response Costs).

12 D. All Site access agreements to be obtained pursuant to  
13 this Section shall provide reasonable access to the Settling Work  
14 Defendant obtaining access, the United States and any of its  
15 agencies, the State of California, and the representatives of  
16 each of the foregoing, including contractors.

17 E. During the effective period of this Decree, the United  
18 States, the State, and their representatives, including contrac-  
19 tors, shall have access, free of charge, to any property at the  
20 Site and any property contiguous to the Site owned or controlled  
21 by any Settling Defendant for any activity authorized by this  
22 Consent Decree, including but not limited to:

- 23 1. Monitoring the progress of the Work activities;
- 24 2. Verifying any data or information submitted by  
25 either Settling Work Defendant to EPA or the State;
- 26 3. Conducting investigations relating to contamina-  
27 tion at or near the Site;



- 1           4. Obtaining samples at the Site;
- 2           5. Inspecting and copying records or other documents  
3           available pursuant to Section XI (Submission of Documents, Sam-  
4           pling and Analysis);
- 5           6. Performing the Work if EPA takes over any part of  
6           the Work pursuant to Subpart AA of Section VII (Work To Be  
7           Performed); and
- 8           7. Performing any of the tasks described in Subpart B of  
9           Section VII (Work To Be Performed).

10           F.1. Lockheed and Weber shall also provide access free of  
11           charge, consistent with any applicable government security re-  
12           quirements that are uniformly applied to all persons on the  
13           premises, to property either or both own(s) or control(s) to the  
14           Settling Work Defendants and the representatives of the Settling  
15           Work Defendants to the extent that such access is necessary for a  
16           Settling Work Defendant to perform the Remedial Design Work or  
17           Remedial Action Work. If either Settling Work Defendant seeks  
18           access pursuant to this Subpart and such access is refused, that  
19           Settling Work Defendant shall, within five days of such refusal,  
20           inform EPA in writing of the reasons it desires the access, the  
21           attempts it has made to obtain access and the impact a denial of  
22           access would have upon its ability to perform its obligations un-  
23           der this Decree, including any deadlines that might be affected.

24           2. The City shall provide, free of charge to any other Set-  
25           tling Party, an area at the Valley Forebay Facility located at  
26           2030 North Hollywood Way, for the groundwater Treatment Plant,  
27           subject to area availability after excluding the area necessary

1 for the blending, booster and disinfection facilities. The total  
2 available area for all such facilities is shown in Appendix F  
3 ("Area F"). The City shall provide Area F free of all structures  
4 or personal property other than existing utility structures. The  
5 City shall also provide, free of charge to any other Settling  
6 Party, access from the City's public right of way to Area F for  
7 pipelines, utilities and related facilities (exclusive of the  
8 groundwater Treatment Plant, blending, booster and disinfection  
9 facilities, and monitoring or extraction wells). Lockheed shall  
10 be solely responsible for obtaining permission from nonparties  
11 that is needed to relocate any overhead or underground utility  
12 structures above or under the surface of Area F necessary to con-  
13 struct any facilities, including the groundwater Treatment Plant,  
14 to be constructed by Lockheed. Lockheed shall be solely respon-  
15 sible for relocating any such utility structures. The City  
16 shall also require, at the request of Lockheed, that any holder  
17 of an easement or franchise for a facility in Area F relocate  
18 such facility, provided that such relocation can be accomplished,  
19 pursuant to such easement or franchise, without cost to the City.

20 3. The City shall provide access free of charge to public  
21 rights of way it owns or controls within the City (i.e., streets,  
22 median strips, gutters, curbs, sidewalks) to Lockheed to the ex-  
23 tent such access is necessary for Lockheed to perform its portion  
24 of the Remedial Design Work or Remedial Action Work. If Lockheed  
25 seeks access pursuant to this Subpart and such access is refused,  
26 Lockheed shall, within five days of such refusal, inform EPA in  
27 writing of the reasons it desires the access, the attempts it has

1 made to obtain access and the impact a denial of access would  
2 have upon its ability to perform its obligations under this  
3 Decree, including any deadlines that might be affected. The City  
4 shall also require, at the request of Lockheed, that any holder  
5 of an easement or franchise for a facility in the public right of  
6 way relocate such facility, provided that such relocation can be  
7 accomplished, pursuant to such easement or franchise, without  
8 cost to the City. Nothing in this Subpart shall interfere with  
9 the City's rights pursuant to Subpart E.2 of Section VI (Binding  
10 Effect).

11 4. Settling Defendants shall also provide access, as  
12 described in Subparts F.2 or F.3 of this Section, respectively,  
13 free of charge to property they own or control to any other  
14 potentially responsible party (including Lockheed) that is  
15 responsible (pursuant to an EPA order or a consent decree with  
16 EPA) for performing any of the tasks described in Subpart B of  
17 Section VII (Work To Be Performed) of this Decree; provided,  
18 however, that the Settling Defendants do not agree to provide  
19 such access voluntarily without a signed agreement with such  
20 other potentially responsible party (including Lockheed), con-  
21 taining terms substantively similar to those to which the Set-  
22 tling Defendants have agreed in Subparts G and H of this Section,  
23 but covering the tasks described in Subpart B of Section VII  
24 (Work To Be Performed). The access required to be provided pur-  
25 suant to this Subpart shall be that access reasonably necessary  
26  
27

1 to enable any such potentially responsible party and its repre-  
2 sentatives to perform any of the tasks described in Subpart B of  
3 Section VII (Work To Be Performed) of this Decree.

4 G. Lockheed, Weber and the City do hereby agree to relieve,  
5 release, indemnify, defend, hold harmless and forever discharge  
6 the others and the others' respective officers, agents,  
7 employees, attorneys, administrators, affiliates, parents, sub-  
8 sidiaries, assigns, representatives, servants, insurers, succes-  
9 sors, heirs and each of them, of and from any and all claims,  
10 rights, debts, liabilities, demands, obligations, liens,  
11 promises, acts, agreements, costs and expenses (including, but  
12 not limited to, attorneys' fees and costs), damages, actions and  
13 causes of action, of whatever kind or nature, (including without  
14 limitation, any statutory, civil or administrative claim),  
15 whether known or unknown, suspected or unsuspected, fixed or con-  
16 tingent, apparent or concealed, in any way based on, arising out  
17 of or related to or connected with its acts or omissions or the  
18 acts or omissions of its officers, agents, employees, attorneys,  
19 administrators, affiliates, parents, subsidiaries, assigns, rep-  
20 resentatives, servants, insurers, successors, heirs and each of  
21 them, in connection with or related to the performance of any  
22 Work.

23 H. Each Settling Defendant performing Work on the property  
24 of another Settling Defendant shall carry liability insurance in  
25 the amount of \$5,000,000.00 (Five Million Dollars) for the  
26 benefit of the owner, and occupant (if any), of the property on  
27 which the Work is being performed.

1 I. The access and information gathering abilities provided  
2 pursuant to this Section are in addition to, and not in lieu of,  
3 any rights of access and information gathering granted to EPA and  
4 its employees, officers, and representatives by statute.

5 J. Any person obtaining access pursuant to this Section  
6 shall comply with all applicable provisions of the Worker Health  
7 and Safety Plan(s) described in the Statement of Work.

8 XI. SUBMISSION OF DOCUMENTS, SAMPLING AND ANALYTIC DATA

9 A. Each Settling Work Defendant shall submit to EPA the  
10 results of all sampling, and/or tests or other analytic data gen-  
11 erated by that Settling Work Defendant or on its behalf, with  
12 respect to the implementation of this Consent Decree, in a sum-  
13 mary form in the monthly progress reports described in Section  
14 VII (Work To Be Performed).

15 B. Upon a written request to a Settling Work Defendant's  
16 Project Coordinator by EPA's Project Coordinator at least four-  
17 teen days prior to a sampling event, that Settling Work Defendant  
18 shall provide EPA with a split or duplicate sample of any sample  
19 taken for purposes of implementing this Decree by that Settling  
20 Work Defendant or anyone acting on its behalf. The United States  
21 shall, pursuant to CERCLA Section 104, 42 U.S.C. § 9604, have the  
22 right to take any samples it deems necessary, including split  
23 samples of samples taken by Settling Work Defendants or anyone  
24 acting on Settling Work Defendants' behalf.

25 C. During the performance of the Work, each Settling Work  
26 Defendant shall notify EPA's Project Coordinator of any planned  
27 sampling to be conducted by that Settling Work Defendant or

1 anyone acting on its behalf with respect to implementation of the  
2 Consent Decree in the monthly progress report submitted prior to  
3 the sampling. Such notice shall provide at least fourteen (14)  
4 days notice of planned sampling to EPA unless otherwise agreed  
5 upon in writing. EPA shall be notified sixty (60) days prior to  
6 the disposal of any sample taken as part of the performance of  
7 the Work and shall have an opportunity to take possession of all  
8 or a portion of any such sample; provided, however, that such op-  
9 portunity to take possession and the requirement of notification  
10 of disposal shall not apply to any continuous line monitoring or  
11 to any monitoring for VOCs.

12 D. Upon request, each Settling Work Defendant shall  
13 provide to EPA any analytical, technical or design data that are  
14 generated by or on behalf of that Settling Work Defendant in the  
15 course of performing the Work at the Site. Such information  
16 shall be provided to EPA within fifteen (15) days of a request by  
17 EPA if such information is in the possession of that Settling  
18 Work Defendant. If such information is under that Settling Work  
19 Defendant's control but not in its possession at the time of the  
20 request, such technical and design data shall be provided to EPA  
21 within thirty (30) days of the request and such analytical data  
22 shall be provided to EPA within sixty (60) days of the request.  
23 The Settling Parties recognize that the provisions of Section  
24 104(e)(7)(F) of CERCLA apply to information generated by Settling  
25 Defendants with respect to the hazardous substances at the Site.

1           E. Upon written request by a Settling Work Defendant's  
2 Project Coordinator to EPA at least fourteen (14) days prior to a  
3 sampling event, EPA will provide to that Settling Work Defendant  
4 a split or duplicate sample of any sample collected by EPA or on  
5 its behalf for purposes of implementing this Consent Decree and  
6 the analytical results obtained from the sample. If EPA collects  
7 any samples pursuant to the Statement of Work or undertakes any  
8 other Work pursuant to the Statement of Work, EPA will attempt to  
9 notify the Settling Work Defendants' Project Coordinators at  
10 least fourteen (14) days in advance and permit Settling Work  
11 Defendants or their representatives to observe such Work;  
12 provided, however, that any failure by EPA to notify Settling  
13 Work Defendants pursuant to this Subpart shall not be deemed a  
14 violation of this Decree.

15           F. Each Settling Work Defendant reserves the right to  
16 assert that documents and other information that it submits to  
17 EPA are entitled to confidential treatment pursuant to Section  
18 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). For each such  
19 claim, the Settling Work Defendant submitting the information  
20 shall clearly mark each document as confidential and provide each  
21 such document to EPA. Any such claims shall be subject to EPA's  
22 confidentiality determination procedure pursuant to 40 C.F.R.  
23 Part 2. If a Settling Work Defendant does not make a confiden-  
24 tiality claim pursuant to CERCLA Section 104(e)(7), 42 U.S.C. §  
25 9604(e)(7), at the time it submits information to EPA, such in-  
26 formation may be made available to the public without any notice  
27 to the Settling Work Defendant.

1        G. The information gathering abilities provided pursuant to  
2 this Section are in addition to, and not in lieu of, any rights  
3 of information gathering granted to EPA by statute.

4        H.1. Lockheed shall provide the following data to the City  
5 at the same time that Lockheed is required to provide such infor-  
6 mation to EPA:

7            a. Analytical sampling results received by Lockheed or  
8 its representatives on extraction wells supplying water to the  
9 groundwater Treatment Plant;

10           b. Analytical sampling results on groundwater Treat-  
11 ment Plant influent, effluent and internal intermediate processes  
12 taken by Lockheed or its representatives.

13        2. Lockheed shall provide the following information to the  
14 City within sixty (60) days of receipt of a written request from  
15 the City:

16           a. All groundwater Treatment Plant operating logs and  
17 summary management reports;

18           b. All reports and study results generated by Lockheed  
19 or its representatives pertaining to groundwater Treatment Plant  
20 efficiency or operations;

21           c. Any other information that Lockheed is required to  
22 submit to EPA pursuant to this Section for which Lockheed does  
23 not claim confidentiality pursuant to Section 104(e)(7), 42  
24 U.S.C. § 9604(e)(7).  
25  
26  
27



1 I.1. The City shall provide to Lockheed, at the same time  
2 that the City is required to provide such information to EPA,  
3 analytical sampling results on blending facility influents, ef-  
4 fluent and internal intermediate processes taken by the City or  
5 its representatives.

6 2. The City shall provide to Lockheed, within sixty (60)  
7 days of a written request from Lockheed, any other information  
8 that the City is required to submit to EPA pursuant to this Sec-  
9 tion for which the City does not claim confidentiality pursuant  
10 to Section 104(e)(7), 42 U.S.C. § 9604(e)(7).

11 3. Twenty days after the end of each month in which the  
12 City draws upon the Lockheed Trust Fund account established pur-  
13 suant to Subpart H of Section XII (Financial Assurance and Trust  
14 Accounts), the City shall provide to Lockheed copies of the con-  
15 tractor invoices and documentation of internal expenses for any  
16 costs incurred by the City during the prior month which the draw  
17 from the Lockheed Trust Fund was intended to reimburse.

## 18 XII. FINANCIAL ASSURANCE AND TRUST ACCOUNTS

19 A.1. Subject to the provisions of Subpart C of this Sec-  
20 tion, Lockheed shall demonstrate its ability to complete the Work  
21 and to pay all costs, penalties and interest for which Lockheed  
22 is or may become responsible under this Decree by obtaining, and  
23 presenting to EPA for approval within thirty (30) days after the  
24 effective date of this Decree, one of the following items for the  
25 amount of \$54,000,000.00:

- 26 a. Performance bond,
- 27 b. Letter of credit, or

**c. Guarantee by a third party.**

2. After Lockheed has been operating phase one for 18 months, or on the date that EPA approves Lockheed's Remedial Action Work Plan for phase two, whichever is later, Lockheed may reduce the financial assurance provided pursuant to this Section to the amount of \$37,000,000.00.

3. After Lockheed has been operating phase two for 18 months, or on the date that EPA approves Lockheed's Remedial Action Work Plan for phase three, whichever is later, Lockheed may reduce the financial assurance provided pursuant to this Section to the amount of \$23,000,000.00.

4. For purposes of this Section, "operation" of any phase shall be deemed to begin on the System Operation Date.

B. EPA may disapprove the financial assurance mechanism presented if, in EPA's determination, it does not provide adequate assurance that Lockheed is able to complete the Work. If Lockheed seeks to demonstrate its ability to complete the Work through a guarantee by a third party pursuant to Subpart A.3 of this Section, Lockheed shall demonstrate that the guarantor passes the financial test specified in 40 C.F.R. § 265.143(e). In determining whether or not such third party satisfies the criteria in 40 C.F.R. § 265.143(e), the amount required in Subpart A of this Section shall be used in place of "the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates," referred to in 40 C.F.R. § 265.143(e).

1           C. In lieu of any of the three items listed in Subpart A  
2 above, Lockheed may present, for EPA's review and approval, in-  
3 ternal or public financial information sufficient to satisfy EPA  
4 that Lockheed has sufficient assets to make additional assurances  
5 unnecessary. EPA shall approve such financial assurance if EPA  
6 determines, based on the information submitted, that Lockheed has  
7 met the criteria in 40 C.F.R. § 265.143(e). In determining  
8 whether or not Lockheed has met these criteria, the amount re-  
9 quired in Subpart A of this Section shall be used in place of  
10 "the sum of the current closure and post-closure cost estimates  
11 and the current plugging and abandonment cost estimates," as  
12 referred to in 40 C.F.R. § 265.143(e). If Lockheed relies on in-  
13 ternal or public financial information for financial assurance,  
14 Lockheed shall submit such information on an annual basis until  
15 this Consent Decree is terminated pursuant to Section XXXIV  
16 (Termination and Satisfaction). If EPA determines the financial  
17 assurances to be inadequate based on its review of Lockheed's  
18 initial submittal or on review of any annual submittal, Lockheed  
19 shall obtain one of the three other financial instruments listed  
20 above in Subpart A of this Section, within thirty (30) days of  
21 receiving notice of such determination. If Lockheed disputes a  
22 determination by EPA that any financial assurance provided pur-  
23 suant to this Subpart C is inadequate, Lockheed shall maintain  
24 one of the three financial instruments listed in Subpart A during  
25 the pendency of the dispute.

1       D. Within sixty (60) days of the effective date of this  
2       Consent Decree, Weber shall establish a trust fund (the "Weber  
3       Trust Fund") in the amount of Three Million Seven Hundred and  
4       Fifty Thousand Dollars (\$3,750,000.00). The instrument estab-  
5       lishing the Weber Trust Fund (the "Weber trust agreement") shall  
6       provide that Lockheed may draw upon the amount in the Weber Trust  
7       Fund to pay costs incurred in performing the Work that Lockheed  
8       has agreed to perform pursuant to Section VII (Work To Be  
9       Performed); provided, however, that if EPA takes over such Work,  
10      Lockheed may no longer draw upon the Weber Trust Fund and EPA  
11      may, instead, draw upon any amounts remaining in the Weber Trust  
12      Fund to reimburse the Superfund for amounts incurred in perform-  
13      ing such Work. Weber shall bear all costs related to the estab-  
14      lishment and maintenance of the Weber Trust Fund; provided,  
15      however, that Weber may use interest earned on the Weber Trust  
16      Fund to pay maintenance fees related to the Weber Trust Fund.  
17      Any additional interest shall be included in the Weber Trust Fund  
18      and drawn upon for performance of the Work by Lockheed or EPA.

19      E. Weber shall submit a signed copy of the Weber trust  
20      agreement to EPA and Lockheed within sixty-five (65) days of the  
21      effective date of the Consent Decree.

22      F. The Weber trust agreement shall require the trustee to  
23      provide a statement of the Weber Trust Fund account to EPA, Weber  
24      and Lockheed on the following schedule. The trustee shall submit  
25      its initial statement by the tenth day of the first calendar  
26      month after the first month in which either Lockheed or EPA draws  
27      upon the Weber Trust Fund. A statement shall be submitted to

1 EPA, Weber and Lockheed on the tenth day of the first calendar  
2 month after each month in which either Lockheed or EPA draws upon  
the Weber Trust Fund.

4 G. This Decree does not require Weber to perform any of the  
5 Work described in Section VII (Work To Be Performed), including  
6 any additions or changes to such Work. Pursuant to this Decree,  
7 Weber's sole responsibility for funding such Work is the obliga-  
8 tion to establish and fund the Weber Trust Fund described in Sub-  
9 parts D through F of this Section. The establishment and funding  
10 of such Weber Trust Fund shall entitle Weber to the covenant not  
11 to sue under Subpart A.2 of Section XVIII (Covenant Not To Sue).

12 H. Within sixty (60) days of the effective date of this  
13 Decree, Lockheed shall establish a trust fund (the "Lockheed  
14 Trust Fund" in the amount of Two Hundred Thousand Dollars  
15 (\$200,000.00). The instrument establishing the Lockheed Trust  
Fund (the "Lockheed trust agreement") shall provide that, upon  
17 submission to the trustee of an invoice with supporting documen-  
18 tation, the City may draw upon the amount in the Lockheed Trust  
19 Fund (up to \$200,000.00) to pay only those costs incurred by the  
20 City in designing and constructing the facilities necessary to  
21 transport treated groundwater from the Point of Delivery to the  
22 Valley Forebay Facility and necessary structural modifications  
23 and diffuser piping; provided, however, that if EPA takes over  
24 such Work, the City may no longer draw upon the Lockheed Trust  
25 Fund and EPA may, instead, draw upon any amounts remaining in the  
26 Lockheed Trust Fund (up to a total of \$200,00.00 drawn by the  
27 City and EPA) to reimburse the Superfund for amounts incurred in

1 performing such Work. Lockheed shall bear all costs related to  
2 the establishment and maintenance of the Lockheed Trust Fund and  
3 receive any interest that accrues pursuant to the Lockheed trust  
4 agreement.

5 I. Lockheed shall submit a signed copy of the Lockheed  
6 trust agreement to EPA and the City within sixty-five (65) days  
7 of the effective date of this Consent Decree.

8 J. The Lockheed trust agreement shall require the trustee  
9 to provide a statement of the Lockheed Trust Fund account to the  
10 City, Lockheed and EPA on the following schedule. The trustee  
11 shall submit its initial statement by the tenth day of the first  
12 calendar month after the first month in which either the City or  
13 EPA draws upon the Lockheed Trust Fund. A statement shall be  
14 submitted to EPA, the City and Lockheed on the tenth day of the  
15 first calendar month after each month in which either the City or  
16 EPA draws upon the Lockheed Trust Fund. The Lockheed Trust Fund  
17 shall be terminated upon EPA's approval of the City's Interim  
18 Remedial Action Report, as defined in the Statement of Work. If  
19 any portion of the \$200,000.00 principal remains in the Lockheed  
20 Trust Fund at the time of termination, such amount shall be  
21 returned to Lockheed.

### 22 XIII. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

23 A. All actions required to be taken pursuant to this Con-  
24 sent Decree shall be undertaken in accordance with the require-  
25 ments of all applicable local, state and federal laws and regula-  
26 tions, including CERCLA, as amended, and in accordance with the  
27 NCP, as amended, and the ROD (as modified by the ESD and Subpart

1 F of Section VII (Work To Be Performed)). Except as provided in  
2 Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), Lockheed  
3 shall obtain or cause its contractors to obtain all permits and  
4 approvals necessary under such laws and regulations for the Work  
5 it is required to perform. The City shall obtain or cause its  
6 contractors to obtain all permits and approvals necessary under  
7 such laws and regulations for the Work it is required to perform.

8 B. Each Settling Work Defendant shall include in all con-  
9 tracts or subcontracts into which it enters for the Work, provi-  
10 sions stating that the contractors or subcontractors, including  
11 their agents and employees, shall perform all activities required  
12 by such contracts or subcontracts in compliance with all ap-  
13 plicable laws and regulations.

14 C. This Consent Decree is not, nor shall it act as, nor is  
15 it intended by the Settling Parties to be, a permit issued pur-  
16 suant to any federal, state, or local statute or regulation.

17 D. All permits or other approvals required for the perfor-  
18 mance of the Work, including permits for any offsite disposal of  
19 hazardous substances, shall be identified in each Settling Work  
20 Defendant's Plan(s) for Satisfaction of Permitting Requirements,  
21 Final Remedial Design Report(s), and Final Remedial Action Work  
22 Plan(s), which are described in the Statement of Work.

23 E. Settling Work Defendants shall dispose of any materials  
24 taken off the Site in compliance with all applicable provisions  
25 of EPA's Revised Procedures for Implementing Off-Site Response  
26 Actions ("Off-Site Policy") (EPA OSWER Directive, 9834.11, Novem-  
27 ber 13, 1987).

**XIV. RETENTION OF RECORDS**

**A. Each Settling Work Defendant shall preserve and retain and shall instruct its contractors, subcontractors, and anyone else acting on its behalf to preserve and retain all records and documents (in the form of originals or exact copies or, in the alternative, in micrographic storage of all originals) in their possession or control developed in the course of performing the Remedial Action Work regardless of any document retention policy to the contrary, for five (5) years after certification of completion of the Work pursuant to Section XXXIV (Termination and Satisfaction). However, at any time during this five-year period, a Settling Work Defendant may deliver to the EPA Project Coordinator originals or copies of all non-privileged records and documents that it is required to preserve and retain under this Subpart A and thereby absolve itself of any further responsibility to preserve and retain such non-privileged records and documents. The obligation to preserve and retain any allegedly privileged documents shall remain until the end of the five (5) year period.**

**B. If a Settling Work Defendant asserts a privilege with respect to any document requested by EPA, it shall, upon request by EPA, provide an identification of such document by date, addressee(s) and addressor(s) and the basis for asserting privilege within twenty (20) days of the request by EPA. Settling Work Defendants may assert any privilege recognized by federal law. If a Settling Work Defendant decides to deliver to EPA all non-privileged documents pursuant to Subpart A of this**



1 Section, that Settling Work Defendant shall also provide to EPA  
2 at that time a list of all documents which it is required to  
3 preserve and retain pursuant to Subpart A but which it is not  
4 turning over based on a claim of privilege. At EPA's request,  
5 that Settling Work Defendant shall identify each such document by  
6 date, addressee(s), and addressor(s) and shall provide the basis  
7 for asserting a privilege within twenty (20) days of the request  
8 by EPA. A Settling Work Defendant may assert any privilege  
9 recognized by federal law. If EPA disagrees with a Settling Work  
10 Defendant's characterization of a document as privileged, EPA may  
11 request that that Settling Work Defendant produce the document.  
12 The Settling Work Defendant(s) shall either comply with such re-  
13 quest or invoke the dispute resolution procedures of Section XX  
14 (Dispute Resolution).

15 **XV. REIMBURSEMENT OF PAST COSTS**

16 A. In full and complete settlement of Lockheed's liability  
17 to the United States for all Past Response Costs incurred by the  
18 United States with respect to the Site, Lockheed shall reimburse  
19 the Superfund in the amount of \$1,958,929.72. Lockheed shall,  
20 within thirty (30) days of the effective date of this Consent  
21 Decree, remit a certified or cashiers check for such amount to  
22 the address listed below:

23 U.S. Environmental Protection Agency, Region IX  
24 Superfund Accounting  
25 P. O. Box 360863M  
26 Pittsburgh, PA 15251  
27 Attention: Collection Officer for Superfund

1        B. Lockheed shall send a transmittal letter with the check  
2 described in Subpart A of this Section. The transmittal letter  
3 shall contain Lockheed's complete and correct address, the  
4 Operable Unit name, and the civil action number. Lockheed shall  
5 also state in the transmittal letter that \$124,307.44 of the  
6 funds are to be applied to site spill identifier ("SSID") #L6 and  
7 \$1,834,622.28 of the funds are to be applied to SSID #59.  
8 Lockheed shall send a copy of the transmittal letter and a copy  
9 of the check to the United States Department of Justice at the  
10 address indicated in Section XXIII (Form of Notice). Lockheed  
11 shall also send a copy of the check and a copy of the transmittal  
12 letter to the EPA Project Coordinator and the EPA Assistant  
13 Regional Counsel at the addresses listed in Section XXIII (Form  
14 of Notice). If Lockheed does not reimburse the Superfund in the  
15 amount specified in Subpart A of this Section within thirty (30)  
16 days of the effective date of this Consent Decree, then interest  
17 on the unpaid amount shall begin to accrue thirty (30) days after  
18 the effective date of this Consent Decree, at the rate specified  
19 in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

20        XVI. REIMBURSEMENT OF FUTURE RESPONSE COSTS

21        A. Lockheed agrees to reimburse the United States for any  
22 Future Response Costs which the United States (1) incurs in con-  
23 nection with the Site prior to the termination of this Consent  
24 Decree pursuant to Section XXXIV (Termination and Satisfaction)  
25 and (2) submits to Lockheed for payment pursuant to this Section.  
26 After this Decree becomes effective, EPA shall submit to  
27 Lockheed, no more frequently than annually, documentation of Fu-

1 Costs under both SSID #L6 and SSID #59 are included in EPA's  
2 documentation. With each check, Lockheed shall send a transmittal  
3 letter which shall include the correct name and address of  
4 Lockheed, the applicable site spill identifier number (SSID #L6  
5 or #59, as identified in EPA's cover letter), the Operable Unit  
6 name, and the civil action number. A copy of each such check and  
7 a copy of the transmittal letter shall be sent to the EPA Project  
8 Coordinator and to the United States Department of Justice, at  
9 the addresses set forth in Section XXIII (Form of Notice).

10 D. Checks should specifically reference the identity of the  
11 Site and be sent to:

12 U.S. Environmental Protection Agency  
13 Region IX  
14 Superfund Accounting  
15 P.O. Box 360863M  
Pittsburgh, PA 15251  
Attention: Collection Officer for Superfund

16 E. Payments made pursuant to this Section or Section XV  
17 (Reimbursement of Past Costs) shall not constitute an admission  
18 by Lockheed of any liability to the United States or any other  
19 person or entity.

#### 20 XVII. RESERVATION AND WAIVER OF RIGHTS

21 A. The United States reserves the right to take any en-  
22 forcement action pursuant to CERCLA and/or any other legal  
23 authority, including the right to seek injunctive relief,  
24 monetary penalties, and punitive damages, for any civil or  
25 criminal violation of law or this Consent Decree, except that the  
26 United States agrees not to seek more than \$25,000 per day per  
27 violation in civil penalties, including stipulated penalties.

1 Except as specifically waived in this Decree, Settling Defen-  
2 dants reserve all defenses to any such enforcement action by EPA.  
3 Notwithstanding compliance with the terms of this Consent Decree,  
4 including completion of the Work, Lockheed is not released from  
5 liability for any matters other than Covered Matters and Weber  
6 and the City are not released from liability for any matters  
7 other than Covered Matters and the tasks described in Subpart B  
8 of Section VII (Work To Be Performed).

9 B. Subject to the dispute resolution provisions of Section  
10 XX (Dispute Resolution), the United States reserves the right to  
11 disapprove of Work performed by a Settling Work Defendant that is  
12 not in compliance with this Consent Decree. Subject to the dis-  
13 pute resolution provisions of Section XX (Dispute Resolution),  
14 the United States also reserves the right to compel a Settling  
15 Work Defendant pursuant to this Decree to perform tasks in addi-  
16 tion to those detailed in the Statement of Work if such tasks are  
17 necessary to meet the requirements that Section VII (Work To Be  
18 Performed) imposes upon that Settling Work Defendant.

19 C. The United States reserves the right to undertake  
20 remedial design and remedial actions, including operation and  
21 maintenance activities (including any operation and maintenance  
22 activities which are not part of the Work), at any time and to  
23 seek to recover all costs of those actions from Settling Defen-  
24 dants; provided, however, that the United States agrees not to  
25 attempt to recover the costs of performing the tasks described in  
26 Subpart B of Section VII (Work To Be Performed) from the City if  
27 the City is in full compliance with the terms of this Decree or

1 from Weber if Weber is in full compliance with the terms of this  
2 Decree. The United States agrees not to undertake any part of  
3 the Work unless (1) the Settling Work Defendant responsible for  
4 that part of the Work fails to perform in an adequate and timely  
5 manner any Work for which it is responsible or (2) EPA, pursuant  
6 to Subpart D of Section XVIII (Covenant Not To Sue), determines  
7 that performance of any additional remedial action tasks related  
8 to the Work (including identification of a new or changed ap-  
9 plicable or relevant and appropriate requirement pursuant to Sub-  
10 part M.2 of Section VII (Work To Be Performed)) are required and  
11 Settling Defendants do not agree to perform these additional  
12 tasks.

13 D.1. The Settling Parties recognize and acknowledge that  
14 the settlement embodied in this Consent Decree may result only in  
15 a partial remediation of conditions at the Site and will result  
16 only in partial implementation of the ROD (as modified by the ESD  
17 and Subpart F of Section VII (Work To Be Performed)). The Set-  
18 tling Defendants hereby waive the defenses of res judicata, col-  
19 lateral estoppel, and claim-splitting against the United States,  
20 but only with respect to the United States' right to pursue sub-  
21 sequent action regarding Settling Defendants' responsibility to  
22 pay for or perform response actions with respect to groundwater  
23 and soil contamination in the San Fernando Valley; provided,  
24 however, that this waiver shall not affect the enforceability of  
25 the covenants not to sue set forth in Section XVIII (Covenant Not  
26 To Sue). The United States hereby retains all of its information  
27 gathering and inspection rights and authorities under CERCLA, the

1 Resource Conservation and Recovery Act ("RCRA"), and any other  
2 applicable statute or regulation. Except as specifically  
3 provided in Section XVIII (Covenant Not To Sue) and Subpart C of  
4 this Section, EPA hereby reserves the right to take any addi-  
5 tional response actions, including any enforcement action, per-  
6 suant to CERCLA, RCRA, and any other applicable statute or  
7 regulation (including the right to take enforcement action seek-  
8 ing to have Settling Defendants pay response costs for or perform  
9 any response actions that are not Covered Matters (including any  
10 tasks necessary to implement the ROD, as modified by the ESD and  
11 Subpart F of Section VII (Work To Be Performed), that are not  
12 part of the Work).

13 2. The Settling Parties recognize that this Decree does not  
14 cover all of the tasks necessary to implement the ROD (as  
15 modified by the ESD and Subpart F of Section VII)). EPA  
16 presently intends to seek to have these additional tasks per-  
17 formed through enforcement actions or judicial settlements with  
18 potentially responsible parties ("PRPs"). These PRPs may include  
19 the Settling Defendants, pursuant to the reservation of EPA's en-  
20 forcement authority in Subparts C and/or D of this Section;  
21 provided, however, that the United States agrees not to take an  
22 enforcement action for the performance of or to recover the costs  
23 of the tasks described in Subpart B of Section VII (Work To Be  
24 Performed) against the City if the City is in full compliance  
25 with the terms of this Decree or against Weber if Weber is in  
26 full compliance with the terms of this Decree.

27

1           E. Settling Defendants reserve any and all defenses or  
2 rights they may have with respect to any actions concerning the  
3 Site, including any enforcement action by EPA pursuant to Subpart  
4 D of this Section, except any rights expressly waived in this  
5 Decree. Settling Defendants retain any and all rights, claims,  
6 remedies and defenses that they have or may have against any per-  
7 son, or entity, including potentially responsible parties, not  
8 expressly waived in this Decree, including any rights, claims,  
9 remedies and defenses they may have as against each other. This  
10 reservation shall not affect each Settling Defendant's obligation  
11 to perform its obligations under this Decree, and shall not af-  
12 fect EPA's ability to assess stipulated penalties in accordance  
13 with Section XIX (Stipulated Penalties).

14           F. Settling Defendants waive any rights they might have to  
15 challenge the United States' or the Court's authority to issue,  
16 enter into or enforce this Decree.

17           G. Settling Defendants waive any claims for damages or  
18 reimbursement from the United States, or for set-off of any pay-  
19 ments made or to be made to the United States, arising from or on  
20 account of any contract, agreement, or arrangement between  
21 Lockheed and/or the City and any person for performance of the  
22 Work on or relating to the Site, including claims on account of  
23 construction delays; provided, however, that nothing in this Con-  
24 sent Decree shall be interpreted as waiving, abrogating or  
25 resolving (1) any claims which any Settling Defendant has or may  
26 have based upon any alleged liability which the United States  
27 Department of Defense, any branch or division thereof, or any

1 predecessor agency has or may have for conditions at the Site  
2 pursuant to CERCLA Sections 106, 107, 113, 120 or 310, 42 U.S.C.  
3 §§ 9606, 9607, 9613, 9620, or 9659 or the Resource Conservation  
4 and Recovery Act ("RCRA") Section 7002, 42 U.S.C. § 6972 or (2)  
5 any claims which Lockheed or Weber have or may have with respect  
6 to the Site pursuant to any contract between Lockheed or Weber  
7 and the United States or between Lockheed or Weber and any  
8 government contractor(s). In agreeing to this reservation the  
9 United States does not admit liability for any such claims and  
10 expressly reserves any and all defenses it may have to any such  
11 claims. Nothing in this Consent Decree shall be interpreted as  
12 waiving, abrogating or resolving any rights or claims which  
13 Lockheed or Weber may have against the United States based upon  
14 any contract between Lockheed or Weber and the United States or  
15 between Lockheed or Weber and any government contractor(s).

16 H. Settling Defendants waive any rights they might other-  
17 wise have to initiate a challenge to the amount of stipulated  
18 penalties due per type of violation as set out in Subpart D or E  
19 of Section XIX (Stipulated Penalties) of this Decree. This  
20 waiver does not including a waiver of the right to dispute the  
21 underlying technical or schedule issues that may have given rise  
22 to the alleged penalties or whether the penalties allegedly due  
23 were calculated in the manner provided for in this Decree.

24 I. The Settling Parties recognize that as a result of the  
25 withdrawal of groundwater from the San Fernando Valley Basin  
26 during the performance of the Remedial Action Work, certain  
27 obligations to provide replacement water or to pay money in place



1 of providing such water will arise, pursuant to the final judg-  
2 ment entered in The City of Los Angeles v. The City of San Fer-  
3 nando, et. al., (Los Angeles Superior Court, Case No C650079,  
4 1979). The Settling Parties agree that the City is responsible  
5 for meeting any such obligations to provide replacement water or  
6 to pay money in place of providing such water which arise under  
7 such judgment as a result of performance of the Remedial Action  
8 Work except that Lockheed is responsible for meeting any such  
9 obligations which arise under such judgment in connection with  
10 any water extracted pursuant to this Decree that the City is not  
11 required to accept at the Point of Delivery.

12 XVIII. COVENANT NOT TO SUE

13 A. 1. Except as provided in Subparts C, D, E and F of this  
14 Section, upon approval by EPA of the Certificate of Completion  
15 with respect to the Work pursuant to Subpart A of Section XXXIV  
16 (Termination and Satisfaction), the United States covenants not  
17 to sue the Settling Work Defendants with regard to Covered Mat-  
18 ters. This Section is not, and shall not be construed as, a  
19 covenant not to sue either Settling Work Defendant if either or  
20 both Settling Work Defendant(s) do(es) not make all payments and  
21 perform all Work which Settling Work Defendants are required to  
22 make or perform by this Consent Decree. Neither Settling Work  
23 Defendant is entitled to a covenant not to sue if the other Set-  
24 tling Work Defendant fails to perform its obligations pursuant to  
25 this Decree. This covenant not to sue does not apply to any  
26 removal or remedial actions taken at the Site beyond those that  
27 are included in Covered Matters.

1           2. Except as provided in Subparts C, D, and E of this Sec-  
2 tion, upon fulfillment of Weber's obligations pursuant to Sub-  
3 parts D through F of Section XII (Financial Assurance and Trust  
4 Account), the United States covenants not to sue Weber with  
5 respect to Covered Matters and not to sue Weber to attempt to  
6 have Weber perform the tasks described in Subpart B of Section  
7 VII (Work To Be Performed) if Weber is in full compliance with  
8 the terms of this Decree.

9           3. Except as provided in Subparts C, D, E and F of this  
10 Section, upon entry of this Decree, the United States covenants  
11 not to sue the City to attempt to have the City perform the tasks  
12 described in Subpart B of Section VII (Work To Be Performed) if  
13 the City is in full compliance with the terms of this Decree.

14           B. Settling Defendants hereby release and covenant not to  
15 sue the United States for any claim, counter-claim, or cross-  
16 claim asserted, or that could have been asserted up to and in-  
17 cluding the effective date of this Consent Decree related to or  
18 arising from this Consent Decree or groundwater contamination at  
19 the Site; provided, however, that nothing in this Consent Decree  
20 shall be interpreted as waiving, abrogating or resolving (1) any  
21 claims which any Settling Defendant has or may have based upon  
22 any alleged liability which the United States Department of  
23 Defense, any branch or division thereof, or any predecessor  
24 agency has or may have for conditions at the Site pursuant to  
25 CERCLA Sections 106, 107, 113, 120 or 310, 42 U.S.C. §§ 9606,  
26 9607, 9613, 9620 or 9659 or RCRA Section 7002, 42 U.S.C. § 6972  
27 or (2) any claims which Lockheed or Weber has or may have with

1 respect to the Site from the United States pursuant to any con-  
2 tract between Lockheed or Weber and the United States or between  
3 Lockheed or Weber and any government contractor(s). In agreeing  
4 to this reservation the United States does not admit liability on  
5 any such claims and expressly reserves any and all defenses that  
6 it may have to any such claims. Except as expressly set forth in  
7 this Decree, Settling Defendants do not waive any claim against  
8 and do not release or covenant not to sue the United States with  
9 respect to any matter.

10 C. Settling Defendants are expressly not released from, and  
11 the provisions of Subpart A of this Section shall not apply to,  
12 any matter not expressly addressed by this Consent Decree, in-  
13 cluding, but not limited to the following claims:

14 1. Claims based on a failure of a Settling Defendant  
15 to meet the requirements of this Decree;

16 2. Any other claims of the United States for any other  
17 costs or actions necessary at the Site which are not Covered  
18 Matters, including any remedial activities that are necessary to  
19 implement the ROD (as modified by the ESD and Subpart F of Sec-  
20 tion VII (Work To Be Performed)), other than the Work, except in-  
21 sofar as Weber and the City are entitled to a covenant not to  
22 sue, pursuant to Subpart A of this Section, for the tasks  
23 described in Subpart B of Section VII (Work To Be Performed);

24 3. Claims based on liability of Lockheed, Weber and/or  
25 the City arising from the past, present, or future disposal of  
26 hazardous substances outside of the Site;

1           4. Any claim or demand for damage to federal property  
2 located any place that the Work is being performed;

3           5. Claims based on criminal liability;

4           6. Claims based on liability for damage to natural  
5 resources as defined in CERCLA;

6           7. Claims based on liability for hazardous substances  
7 removed from the Site;

8           8. Claims for Future Response Costs (and interest  
9 thereon) that become due and payable pursuant to Section XVI  
10 (Reimbursement of Future Response Costs) of this Consent Decree,  
11 but which Lockheed does not pay by the date any such amounts are  
12 due;

13           9. Claims based on liability for future monitoring,  
14 oversight, or other response costs incurred by the United States  
15 except as those expenses are Covered Matters; or

16           10. Liability for any violations of federal or State  
17 law which occur during performance of the Work.

18           D. Notwithstanding any other provisions of this Consent  
19 Decree, the United States reserves the right to institute  
20 proceedings in this action, or in a new action, or to issue an  
21 Order seeking to compel Lockheed and/or the City and/or Weber to  
22 perform the following tasks with respect to Covered Matters:

23           1. Perform any additional response work, including  
24 changes in the Work, at or related to the Site; or  
25  
26  
27

2. Reimburse the United States for response costs and  
reimburse the State for its matching share of any response ac-  
tions undertaken under CERCLA with respect to Covered Matters,  
relating to the Site, if:

a. for proceedings prior to EPA certification of  
completion of the Work pursuant to Section XXXIV (Termination and  
Satisfaction),

i. conditions at the Site, previously un-  
known to the United States, are discovered after the entry of  
this Decree, or

ii. information is received, in whole or in  
part, after entry of this Decree, and these previously unknown  
conditions or this information indicates that the Remedial Action  
previously selected by EPA is not protective of human health and  
the environment;

b. for proceedings subsequent to EPA certification of  
completion of the Work pursuant to Section XXXIV (Termination and  
Satisfaction),

i. conditions at the Site, previously un-  
known to the United States, are discovered after the certifica-  
tion of completion by EPA, or

ii. information is received, in whole or in  
part, after the certification of completion by EPA, and these  
previously unknown conditions or this information indicates that  
the Remedial Action previously selected by EPA is not protective  
of human health and the environment.

1        E.1.a. The reservation contained in Subpart D of this Sec-  
2 tion pertains only to additional tasks related to the Work. The  
3 United States does not have to meet the standards contained in  
4 Subpart D to seek to have Lockheed perform additional tasks that  
5 are excluded from the definition of the Work. Lockheed retains  
6 any and all defenses to an action by EPA to have Lockheed perform  
7 additional tasks not required by this Decree except those  
8 defenses waived in Subpart D.1 of Section XVII (Reservation and  
9 Waiver of Rights).

10        b. The reservation contained in Subpart D of this Section  
11 pertains only to additional tasks related to the Work. The  
12 United States does not have to meet the standards contained in  
13 Subpart D to seek to have Weber perform additional tasks that are  
14 excluded from the definition of the Work; provided, however, that  
15 EPA agrees not to seek to have Weber perform the tasks described  
16 in Subpart B of Section VII if Weber has a covenant not to sue  
17 for those tasks, pursuant to Subpart A.2 of this Section. Weber  
18 retains any and all defenses to an action by EPA to have Weber  
19 perform additional tasks not required by this Decree except those  
20 defenses waived in Subpart D.1 of Section XVII (Reservation and  
21 Waiver of Rights).

22        c. The reservation contained in Subpart D of this Section  
23 pertains only to additional tasks related to the Work. The  
24 United States does not have to meet the standards contained in  
25 Subpart D to seek to have the City perform additional tasks that  
26 are excluded from the definition of the Work; provided, however,  
27 that EPA agrees not to seek to have the City perform the tasks

1 described in Subpart B of Section VII if the City has a covenant  
2 not to sue for those tasks, pursuant to Subpart A.3 of this Sec-  
3 tion. The City retains any and all defenses to an action by EPA  
4 to have the City perform additional tasks not required by this  
5 Decree except those defenses waived in Subpart D.1 of Section  
6 XVII (Reservation and Waiver of Rights).

7 2. If the United States institutes proceedings in this ac-  
8 tion or in a new action or issues an order pursuant to the reser-  
9 vation contained in Subpart D of this Section, each Settling  
10 Defendant reserves any and all defenses it may have to any por-  
11 tion of such action or order that requires a Settling Defendant  
12 to perform tasks in addition to any portion of the Work which  
13 that Settling Defendant agreed to perform in Section VII (Work To  
14 Be Performed) of this Decree.

15 F. Notwithstanding any other provision in this Consent  
16 Decree, this covenant not to sue shall not relieve Settling  
17 Defendants of their obligations to meet and maintain compliance  
18 with the requirements set forth in this Consent Decree. The  
19 United States reserves all its rights to take response actions at  
20 the Site with respect to the Work in the event that EPA deter-  
21 mines that a Settling Work Defendant has failed to perform, in an  
22 adequate and timely manner, the Work it is required to perform  
23 pursuant to this Decree, and to seek to recover from that Set-  
24 tling Work Defendant response costs which:

- 25 1. Result from such a breach of the Decree;
- 26 2. Relate to any portion of the Work funded or per-  
27 formed by the United States; or

1           3. Are enforcement costs incurred by the United States  
2 associated with the Site.

3           G. Nothing in this Consent Decree shall constitute or be  
4 construed as a release from, or a covenant not to sue regarding,  
5 any claim, cause of action, or demand in law or equity against  
6 any person, firm, trust, joint venture, partnership, corporation  
7 or other entity not a signatory to this Consent Decree for any  
8 liability it may have arising out of or relating to the Site.

9           H. The Settling Parties agree that the United States shall  
10 be under no obligation to assist Settling Defendants in any way  
11 in defending against suits for contribution brought against Set-  
12 tling Defendants, including any which allege liability for mat-  
13 ters covered by this covenant not to sue.

14                   XIX. STIPULATED PENALTIES

15           A.1. Unless excused by EPA or a force majeure event,  
16 Lockheed shall be liable for stipulated penalties to the United  
17 States, as set forth in Subpart D of this Section, for each  
18 failure by Lockheed to comply with the requirements of this Con-  
19 sent Decree. Lockheed shall not be liable for stipulated  
20 penalties for failure to meet requirements that are solely the  
21 obligation of the City pursuant to this Decree.

22           2. Unless excused by EPA or a force majeure event, the City  
23 shall be liable for stipulated penalties to the United States, as  
24 set forth in Subpart E of this Section, for each failure by the  
25 City to comply with the requirements of this Consent Decree. The  
26  
27



1 City shall not be liable for stipulated penalties for failure to  
2 meet requirements that are solely the obligation of Lockheed pur-  
3 suant to this Decree.

4 B.1. Any reports, plans, specifications, schedules,  
5 deliverables, appendices, and attachments required by this Decree  
6 or the Statement of Work, are, upon approval by EPA, incorporated  
7 into this Decree. A failure by a Settling Work Defendant to  
8 comply with applicable EPA-approved reports, plans, specifica-  
9 tions, schedules, deliverables, appendices, or attachments shall  
10 be considered a failure to comply with this Decree and shall sub-  
11 ject that Settling Work Defendant to stipulated penalties as  
12 provided in Subpart D or E of this Section.

13 2. Failure to comply with this Consent Decree shall also  
14 include but is not limited to the following:

15 a. Failure to submit deliverables specified in this  
16 Consent Decree or the Statement of Work in an acceptable manner  
17 and by the date due pursuant to this Decree; provided, however,  
18 that if the failure to comply results from a determination by EPA  
19 that a written deliverable is inadequate, the Settling Work  
20 Defendant required to submit the draft deliverable shall have ten  
21 (10) working days from receipt of EPA's written notice of disap-  
22 proval, or such other longer time period as provided by EPA in  
23 the notice of disapproval, within which to correct the inadequacy  
24 and resubmit the deliverable for approval. Any disapproval by  
25 EPA shall include an explanation of why the deliverable is inade-  
26  
27

1 quate. If the resubmitted deliverable is inadequate, the Set-  
2 tling Work Defendant required to submit the deliverable shall be  
3 deemed to be in violation of this Decree.

4 b. Failure by a Settling Work Defendant to use best  
5 efforts to obtain any permits necessary for offsite Work which  
6 that Settling Work Defendant is required to perform or failure by  
7 a Settling Work Defendant to use best reasonable efforts to ob-  
8 tain necessary access agreements.

9 c. Failure to comply with any permit obtained for the  
10 purpose of implementing the requirements of this Consent Decree  
11 in any offsite location.

12 C. Stipulated penalties for failure to perform any require-  
13 ment of this Consent Decree for which a deadline is specified  
14 shall begin to accrue on the first day after the deadline.  
15 Stipulated penalties for any other violation of this Consent  
16 Decree shall begin to accrue on the first day after the Settling  
17 Work Defendant(s) subject to penalties receive(s) notice from EPA  
18 of such violation. For any violation, stipulated penalties shall  
19 continue to accrue up to and including the day on which the non-  
20 compliance is corrected. EPA, in its sole discretion, may waive  
21 or reduce stipulated penalties. If EPA does not waive stipulated  
22 penalties, EPA shall provide the Settling Work Defendant(s) sub-  
23 ject to penalties with written notice of the alleged deficiency  
24 in compliance with this Decree, and accrued stipulated penalties  
25 shall become payable thirty (30) days after Settling Work  
26 Defendant's receipt of EPA's written notice of deficiency;  
27 provided, however, that if EPA provides notice of an alleged

1 deficiency, and that deficiency continues, EPA shall not be re-  
2 quired to provide any additional notice in order for stipulated  
3 penalties to continue to accrue and become payable.

4 D. With respect to Lockheed, stipulated penalties shall ac-  
5 crue in the following amounts, and, as provided in Subpart H of  
6 Section XVII (Reservation and Waiver of Rights), Lockheed may not  
7 dispute the amount of stipulated penalties due per type of viola-  
8 tion:

9 1. Monthly Progress Reports and Quarterly Quality Assurance  
10 Reports

11 (a). Lockheed shall pay a stipulated penalty of \$1,000 per  
12 day for the submission of a late or deficient Monthly Progress  
13 Report.

14 (b) Lockheed shall pay a stipulated penalty of \$1,000 per  
15 day for the submission of a late or deficient Quarterly Quality  
16 Assurance Report.

17 2. MCL Effluent Violations

18 (a). At any time after the first sixty (60) days after the  
19 System Operation Date for each phase, if the concentration of TCE  
20 in the treated water is greater than 5.0 ppb, Lockheed shall be  
21 considered to have been out of compliance for each day for which  
22 the representative treated water sample (as defined in Subpart  
23 J.1 of Section VII (Work to Be Performed)) indicates that the  
24 concentration of TCE was greater than 5.0. ppb. Lockheed shall  
25 be subject to stipulated penalties in the amount of \$5,000 per  
26 day for each such day of noncompliance.

1 (b). At any time after the first sixty (60) days after the  
2 System Operation Date for each phase, if the concentration of PCE  
3 in the treated water is greater than 5.0 ppb, Lockheed shall be  
4 considered to have been out of compliance for each day for which  
5 the representative treated water sample (as defined in Subpart  
6 J.1 of Section VII (Work To Be Performed)) indicates that the  
7 concentration of PCE was greater than 5.0 ppb. Lockheed shall be  
8 subject to stipulated penalties in the amount of \$5,000 per day  
9 for each such day of noncompliance.

10 (c) At any time after the first sixty (60) days after the  
11 System Operation Date for each phase, if the concentration of a  
12 volatile organic compound ("VOC") other than TCE or PCE in the  
13 treated water is greater than the MCL in effect at that time for  
14 such VOC, Lockheed shall be considered to have been out of com-  
15 pliance for each day for which the representative treated water  
16 sample (as defined in Subpart J.1 of Section VII (Work To Be  
17 Performed)) indicates that the concentration of that VOC was  
18 greater than the MCL in effect, provided that the MCL in effect  
19 was promulgated on or before January 31, 1991. Lockheed shall be  
20 subject to stipulated penalties in the amount of \$5,000 per day  
21 for each such day of noncompliance.

22 (d) At any time after the first sixty (60) days after an  
23 analytical sample result shows that the concentration of a con-  
24 taminant in the treated water other than a VOC or nitrate is  
25 greater than the MCL in effect at that time for such contaminant,  
26 Lockheed shall be considered to have been out of compliance for  
27 each day for which the representative treated water sample (as

defined in Subpart J.1 of Section VII (Work To Be Performed)) indicates that the concentration of that contaminant was greater than the MCL in effect, provided that the MCL in effect was promulgated on or before January 31, 1991. Lockheed shall be subject to stipulated penalties in the amount of \$3,000 per day for each such day of noncompliance.

### 3. Class I Violations

<u>Period of Noncompliance</u>	<u>Penalty Per Day Per Violation</u>
Days 1 - 5	\$1,000
Days 6 - 30	\$2,500
After 30 Days	\$5,000

(a). Each failure to comply in a timely and adequate manner with the terms of this Consent Decree, including the Statement of Work, and any documents incorporated into this Decree pursuant to this Decree, that are not specifically listed as a violation anywhere else under Subparts D.1 or D.2 of this Section or under this Class I or under Classes II or III, and specifically including any failure to comply with the substantive standards of any applicable or relevant and appropriate requirement identified in the ROD (as modified by the ESD and Subpart F of Section VII (Work To Be Performed)) not identified as a violation under Subparts D.1 or D.2 of this Section or under Class II or Class III, provided that Lockheed shall not be subjected to stipulated penalties for any requirement of this Decree that is solely the obligation of the City pursuant to this Decree.

(b). Failure to submit any of the following:

- i. Draft Conceptual Design Report(s)

- 1           ii. Draft Pre-Final Design Report(s)  
2           iii. Draft Remedial Action Work Plan(s)  
3           iv. Draft Remedial Design Work Plan(s)  
4           v. Draft Preliminary Sampling Plan  
5           vi. Draft Interim Remedial Action Report(s)  
6           vii. Notification of Selection of RD  
7                 Architect/Engineer  
8           viii. Notification of Selection of RA Engineer  
9           ix. Notification of Selection of RA  
10                 Contractors/Subcontractors  
11           x. Draft Plan(s) for Satisfaction of Permit  
12                 Requirements  
13           ix. Draft QA Project Plan(s)  
14           x. Draft Operational Sampling Plan(s)  
15           xi. Draft Operation and Maintenance Plan(s)  
16           xii. Notification of Selection of Independent  
17                 Quality Assurance Team  
18       (c) Each violation of the following:  
19           i. Obligation to hold Preconstruction Conference(s)  
20           ii. Obligation to hold Pre-Final Inspection(s)  
21           iii. Obligation to hold Final Inspection(s)  
22           iv. Applicable or Relevant and Appropriate Require-  
23                 ments, other than MCL violations  
24                 and South Coast Air Quality Management District  
25                 Regulation XIII

1 4. Class II Violations

2	<u>Period of Noncompliance</u>	<u>Penalty Per Day Per Violation</u>
3	Days 1 - 5	\$2,000
4	Days 6 - 30	\$4,000
5	After 30 Days	\$10,000

6 (a). Failure to submit any of the following:

- 7 i. Draft Final Remedial Design Report(s)
- 8 ii. Final Pre-Final Design Report(s)
- 9 iii. Final Health and Safety Plan(s)
- 10 iv. Final Preliminary Sampling Plan
- 11 v. Final Interim Remedial Action Report(s)
- 12 vi. Plan(s) for Satisfaction of Permit Requirements
- 13 vii. Remedial Design Workplan(s)
- 14 viii. Conceptual Remedial Design Report(s)

15 (b). Each violation of the following:

- 16 i. QA Project Plan(s)
- 17 ii. Remedial Design Work Plan(s)
- 18 iii. Plan(s) for Satisfaction of Permit Requirements
- 19 iv. California South Coast Air Quality Management
- 20 District Regulation XIII
- 21 v. Preliminary Sampling Plan
- 22 vi. Remedial Action Work Plan(s)

23 5. Class III Violations

24	<u>Period of Noncompliance</u>	<u>Penalty Per Day Per Violation</u>
25	Days 1 - 5	\$5,000
26	Days 6 - 30	\$8,000
27	Days 30-60	\$15,000

After 60 Days \$20,000

(a). Failure to submit any of the following:

i. Final Remedial Design Report(s)

ii. Remedial Action Work Report(s)

iii. Operation & Maintenance Plan(s)

iv. Final QA Project Plan(s)

(b). Each violation of the following:

i. Operation & Maintenance Plan(s)

ii. Operation Sampling Plan(s)

E. With respect to the City, stipulated penalties shall accrue in the following amounts, and, as provided in Subpart H of Section XVII (Reservation and Waiver of Rights), the City may not dispute the amount of stipulated penalties due per type of violation:

1. Monthly Progress Reports and Quarterly Quality Assurance Reports

(a). The City shall pay a stipulated penalty of \$500 per day for the submission of a late or deficient Monthly Progress Report.

(b) The City shall pay a stipulated penalty of \$500 per day for the submission of a late or deficient Quarterly Quality Assurance Report.

2. Class I Violations

Period of Noncompliance

Penalty Per Day Per Violation

Days 1 - 5

\$500

Days 6 - 30

\$1,000

After 30 Days

\$2,500



(a). Each failure to comply in a timely and adequate manner with the terms of this Consent Decree, including the Statement of Work, and any documents incorporated into this Decree pursuant to this Decree, that are not specifically listed as a violation under Class II, and specifically including any failure to comply with the substantive standards of any applicable or relevant and appropriate requirement identified in the ROD (as modified by the ESD and Subpart F of Section VII (Work To Be Performed)) not identified as a violation under Class II; provided that the City shall not be subjected to stipulated penalties for any requirement of this Decree that are solely the obligation of Lockheed pursuant to this Decree.

3. Class II Violations

<u>Period of Noncompliance</u>	<u>Penalty Per Day Per Violation</u>
Days 1 - 5	\$1,000
Days 6 - 30	\$3,000
After 30 Days	\$10,000

(a). Failure to submit any the following:

i. Plan for Satisfaction of Permitting Requirements

ii. QA Project Plan (or equivalent document(s) pursuant to Subpart E of Section VIII (Quality Assurance))

iii. Health and Safety Plan

iv. Operation and Maintenance Plan

(b). Failure to comply with any of the following:

i. Plan for Satisfaction of Permitting

**Requirements**

**ii. QA Project Plan (or equivalent document(s)**

**pursuant to Subpart E of Section VIII**

**(Quality Assurance))**

**iii. Health and Safety Plan**

**iv. Operation and Maintenance Plan**

**F. All stipulated penalties owed pursuant to this Decree shall be paid by certified check made payable to the "EPA-Hazardous Substance Superfund" within thirty (30) days after receipt of EPA's notice of deficiency by the Settling Work Defendant that it failed to meet a requirement of this Decree. Interest shall begin to accrue on any penalty due thirty (30) days after that Settling Work Defendant receives EPA's notice of deficiency. A copy of the check and a copy of the letter forwarding the check, which letter shall include a brief description of the alleged violation, Settling Work Defendant's complete and correct address, the Operable Unit name, the Site spill identifier number (SSID #L6), the civil action number, and the date of receipt of EPA's notice of deficiency shall be submitted to the EPA Project Coordinator, the EPA Assistant Regional Counsel, and the United States Department of Justice at the addresses to which notice is to be provided pursuant to Section XXIII (Form of Notice). The check and the original copy of the letter shall be sent to:**

**U.S. Environmental Protection Agency  
Region IX  
Superfund Accounting  
P.O. Box 360863M  
Pittsburgh, PA 15251  
Attention: Collection Officer for Superfund**

1 If a Settling Work Defendant fails to pay stipulated penalties in  
2 accordance with this Section, the United States may institute  
3 proceedings in this action or a new action to collect the  
4 penalties and any interest due.

5 G. Notwithstanding the stipulated penalties provided for  
6 in this Section, and to the extent authorized by law, EPA may  
7 elect to assess civil penalties or bring an action in District  
8 Court to enforce the provisions of this Consent Decree. Payment  
9 of stipulated penalties shall not preclude EPA from electing to  
10 pursue any other remedy or sanction it may have to enforce this  
11 Consent Decree, and nothing in this Decree shall preclude EPA  
12 from seeking statutory penalties against a Settling Defendant who  
13 violates statutory or regulatory requirements, except that the  
14 total civil penalties (including stipulated penalties) collected  
15 by EPA for any such violation shall not exceed \$25,000 per day  
16 per violation.

17 H. Each Settling Work Defendant may dispute any notice of  
18 deficiency issued to it. Penalties shall continue to accrue as  
19 provided in this Section but need not be paid until the follow-  
20 ing:

21 1. If the dispute is resolved by agreement or by decision  
22 or order of EPA which is not appealed to this Court, accrued  
23 penalties, plus interest at the rate specified in 28 U.S.C. §  
24 1961, shall be paid to EPA within thirty (30) days of the agree-  
25 ment or Settling Work Defendant's receipt of EPA's decision or  
26 order;  
27

1           2. If a Settling Work Defendant appeals EPA's decision  
2 pursuant to Subpart C of Section XX (Dispute Resolution) and  
3 prevails upon final resolution of the dispute, no stipulated  
4 penalties or interest thereon will be payable and any assessment  
5 of stipulated penalties and interest thereon shall be set aside  
6 in writing by EPA.

7           3. If a Settling Work Defendant appeals EPA's decision  
8 pursuant to Subpart C of Section XX (Dispute Resolution) and does  
9 not prevail upon final resolution of the dispute, all accrued  
10 stipulated penalties, plus interest at the rate specified in 28  
11 U.S.C. § 1961, shall be paid within thirty (30) days of a final  
12 court order.

13           I.1. In the event that, pursuant to Subpart AA of Section  
14 VII (Work To Be Performed), EPA assumes performance of all or a  
15 portion of the Work that Lockheed is required by this Decree to  
16 perform, Lockheed shall, in lieu of any other penalties that  
17 might be payable under this Decree, pay a Work Assumption Penalty  
18 in the amount of one million dollars (\$1,000,000.00). Lockheed  
19 is not required to pay a Work Assumption Penalty if EPA takes  
20 over the Work pursuant to Subpart C(2) of Section XVII  
21 (Reservation and Waiver of Rights).

22           2. In the event that, pursuant to Subpart AA of Section VII  
23 (Work To Be Performed), EPA assumes performance of all or a por-  
24 tion of the Work that the City is required by this Decree to per-  
25 form, the City shall, in lieu of any other penalties that might  
26 be payable under this Decree, pay a Work Assumption Penalty in  
27 the amount of two hundred and fifty thousand dollars

1 (\$250,000.00). The City is not required to pay a Work Assumption  
2 Penalty if EPA takes over the Work pursuant to Subpart C(2) of  
3 Section XVII (Reservation and Waiver of Rights).

4 3. Payment of the Work Assumption penalties provided for in  
5 this Subpart H shall be in addition to any stipulated penalties  
6 which accrued prior to a Settling Work Defendant's receipt of  
7 EPA's notice of intent to take over all or a portion of the Work.  
8 Unless waived by EPA, such Work Assumption Penalty shall be pay-  
9 able within thirty (30) days after a Settling Work Defendant's  
10 receipt of notice that EPA intends to take over all or a portion  
11 of the Work. However, if that Settling Work Defendant invokes  
12 the dispute resolution procedure, payment of its Work Assumption  
13 Penalty shall be tolled until thirty (30) days after final  
14 resolution of the dispute; provided, however, that that Settling  
15 Work Defendant shall not pay any Work Assumption Penalty or,  
16 pre-assumption penalties related to the issue(s) on which that  
17 Settling Work Defendant prevails, or interest thereon if it is  
18 determined that EPA's takeover of the Work of that Settling Work  
19 Defendant was not permitted pursuant to Subpart Y of Section VII  
20 (Work to Be Performed).

21 XX. DISPUTE RESOLUTION

22 A. As required by Section 121(e) of CERCLA, 42 U.S.C. §  
23 9621(e), the Settling Parties shall attempt to resolve ex-  
24 peditiously and informally any disagreements arising under or  
25 from the implementation of this Decree or any Work required  
26 hereunder.

1           B. If a dispute arises with respect to the meaning or ap-  
2 plication of this Decree, other than one regarding the amount of  
3 stipulated penalties due per type of violation, the dispute shall  
4 in the first instance be the subject of informal good-faith nego-  
5 tiations between EPA and the appropriate Settling Defendant(s)  
6 pursuant to Subpart C of this Section. In the event that the  
7 parties cannot resolve the dispute, the interpretation advanced  
8 by EPA shall be considered binding unless a Settling Defendant  
9 invokes the dispute resolution provisions of Subpart F of this  
10 Section. The decision to invoke dispute resolution shall not in  
11 and of itself constitute a force majeure. Settling Defendants  
12 reserve the right to dispute a determination by EPA that a force  
13 majeure has not occurred.

14           C. If a Settling Defendant has a good-faith objection to a  
15 decision by EPA with respect to Covered Matters or if a Settling  
16 Defendant believes that it has otherwise reached an impasse with  
17 EPA with regard to the requirements or interpretation of this  
18 Consent Decree, that Settling Defendant shall notify EPA's  
19 Project Coordinator and EPA's Office of Regional Counsel in writ-  
20 ing of its position, within fourteen (14) days of receipt of  
21 EPA's decision or of determining that an impasse has been  
22 reached. EPA and the Settling Defendant shall then have fourteen  
23 (14) days from EPA's receipt of the written notice to resolve the  
24 matter. If possible, the dispute shall be resolved by informal  
25 telephone conferences. Either EPA or the Settling Defendant may  
26 also request that the parties meet and confer to try to resolve  
27 the dispute within the fourteen (14) day period. By the end of

1 the foregoing fourteen (14) day period or within seven (7) days  
2 after the parties meet and confer, whichever is later, EPA shall  
3 issue a written decision regarding the dispute.

4 D. Invocation of the Dispute Resolution procedure, by it-  
5 self, will not postpone the Work schedule with respect to any  
6 disputed issue or stay the accrual of stipulated penalties. EPA  
7 agrees not to demand payment of penalties and interest accrued  
8 until completion of the Dispute Resolution process.

9 E. If a Settling Defendant chooses not to follow EPA's  
10 decision regarding the dispute, that Settling Defendant may file  
11 with the Court a petition briefly describing the nature of the  
12 dispute and its suggested resolution. Such a petition shall not  
13 be filed before EPA has issued its written determination pursuant  
14 to Subpart C of this Section and shall not be filed more than  
15 thirty (30) days after EPA has issued such determination. EPA  
16 shall have thirty (30) days to respond to the petition.

17 F. In any dispute resolution proceeding regarding selec-  
18 tion of the remedial action, the Court shall uphold EPA's deci-  
19 sion unless the Settling Defendant can demonstrate on the basis  
20 of the Administrative Record that EPA's decision was arbitrary  
21 and capricious or not otherwise in accordance with the law, as  
22 set forth in CERCLA Section 113(j)(2), 42 U.S.C. § 9613(j)(2).  
23 In any dispute involving a claim of force majeure, the Settling  
24 Defendant shall have the burden of proving by a preponderance of  
25 the evidence that any delay was, is or will be caused by events  
26 beyond its control and that the duration of any delay requested  
27 by a Settling Defendant is necessitated by the force majeure. In

1 all other disputes, the standard of review shall be determined by  
2 the Court in accordance with general principles of administrative  
3 law. In all disputes, the Settling Defendant shall have the bur-  
4 den of proof. Upon this Court's resolution of the dispute,  
5 stipulated penalties shall be paid or set aside in accordance  
6 with Subpart H of Section XIX (Stipulated Penalties). A finding  
7 that a Settling Defendant has prevailed shall not excuse stipu-  
8 lated penalties for failure to perform requirements not in dis-  
9 pute, except to the extent a Settling Defendant can show that it  
10 was impracticable to perform those requirements pending resolu-  
11 tion of the dispute. If the Settling Defendant prevails, the  
12 deadlines for any requirements which Settling Defendants could  
13 not practicably meet during the dispute resolution proceedings  
14 shall be extended to account for any delays attributable to such  
15 proceedings.

16 **XXI. FORCE MAJEURE**

17 A. The Settling Parties agree that time is of the essence  
18 in the implementation of this Consent Decree. Settling Defen-  
19 dants shall perform all the requirements of this Consent Decree  
20 according to the schedules set forth herein or established  
21 hereunder or any approved modifications thereto unless their per-  
22 formance is prevented or delayed by events which constitute a  
23 force majeure.

24 B. For the purposes of this Decree, a force majeure is  
25 defined as any event arising from causes beyond the control of a  
26 Settling Defendant or its contractors, subcontractors or consult-  
27 ants, which delays or prevents that Settling Defendant's perfor-



1 nance notwithstanding that Settling Defendant's best efforts to  
2 avoid the delay. This requirement that a Settling Defendant ex-  
3 ercise "best efforts to avoid the delay" includes using best ef-  
4 forts to anticipate any potential force majeure event and to ad-  
5 dress the effects of any force majeure event (1) as it is occur-  
6 ring and (2) following the force majeure event, such that any  
7 delay is minimized to the greatest extent practicable. Neither  
8 economic hardship nor increased costs shall be considered a force  
9 majeure. A force majeure may include, but is not limited to, ex-  
10 traordinary weather events, natural disasters, national emer-  
11 gencies, failure by the other Settling Work Defendant to perform  
12 Work that is necessary for the Settling Work Defendant asserting  
13 a force majeure to perform its obligations, delays in obtaining  
14 access to property not owned or controlled by the Settling Defen-  
15 dant, despite timely, best reasonable efforts to obtain such ac-  
16 cess, and delays in obtaining any required approval or permit  
17 from EPA or other governmental entities that result despite the  
18 Settling Defendant's submission of all information and documenta-  
19 tion reasonably required for approval or applications for permits  
20 (and any supplemental information and documentation that may  
21 reasonably be requested) within a time frame that would permit  
22 the Work to proceed in accordance with the schedule contained in  
23 or established pursuant to this Decree.

1 C. If a Settling Defendant invokes force majeure, it shall  
2 have the burden of proving by a preponderance of the evidence  
3 that any delay was, is or will be caused by events beyond its  
4 control and that the duration of any extension requested is  
5 necessitated by the force majeure.

6 D. In the event of a force majeure, the time for perfor-  
7 mance of the activity delayed by the force majeure shall be ex-  
8 tended for the minimum time necessary to allow completion of the  
9 delayed activity. The time for performance of any activity by  
10 any Settling Defendant dependent on the delayed activity shall be  
11 similarly extended. An extension of the time for performance of  
12 an obligation directly affected by the force majeure event shall  
13 not, of itself, extend the time for performance of any subsequent  
14 obligation unless the subsequent obligation is dependent upon the  
15 obligation directly affected. EPA shall determine whether re-  
16 quirements are to be delayed and the time period granted for any  
17 delay. Settling Defendants shall exercise best efforts to avoid  
18 or minimize any delay and any effects of a delay caused by a  
19 force majeure.

20 E. In the event of a force majeure, any Settling  
21 Defendant(s) asserting force majeure shall orally notify EPA's  
22 Project Coordinator or, in his or her absence, the Director of  
23 the Hazardous Waste Management Division, EPA, Region IX, im-  
24 mediately (no later than 48 hours after that Settling Defendant  
25 becomes aware of the force majeure) and shall notify EPA in writ-  
26 ing within ten (10) calendar days after discovery of the force  
27 majeure. The written notification shall describe the force

1 majeure, the anticipated length of any delay, any measures which  
2 that Settling Defendant is taking or plans to take to mitigate  
3 the event or the delay and a schedule for implementation of such  
4 measures, and a statement as to whether, in the opinion of that  
5 Settling Defendant, such event may cause or contribute to an en-  
6 dangerment to public health, welfare, or the environment.

7 F. Failure of a Settling Defendant to comply with the  
8 notification requirements of this Section shall result in forfei-  
9 ture of its right to claim a force majeure delay.

10 XXII. CONTRIBUTION PROTECTION

11 With regard to claims for contribution against Settling  
12 Defendants for matters addressed in this Consent Decree, the Set-  
13 tling Parties agree that Settling Defendants are entitled, as of  
14 the effective date of this Decree, to such protection from con-  
15 tribution actions or claims as provided in CERCLA Section  
16 113(f)(2), 42 U.S.C. § 9613(f)(2); provided, however, that each  
17 Settling Defendant expressly waives the provisions of CERCLA Sec-  
18 tion 113(f)(2), 42 U.S.C. § 9613(f)(2), as against any other Set-  
19 tling Defendant, and reserves its right to pursue any other Set-  
20 tling Defendant(s) for the cost of response activities related to  
21 the Site and the City reserves its rights (if any) to pursue any  
22 other Settling Defendant for any damages to natural resources.

23 XXIII. FORM OF NOTICE

24 A. Except insofar as oral notification is specifically  
25 provided for in this Decree, when notification to or communica-  
26 tion with the United States Department of Justice, EPA, Lockheed,  
27

1    Weber or the City is required by the terms of this Consent  
2    Decree, it shall be in writing, postage prepaid, and addressed as  
3    follows:

4    As to EPA:

5           EPA Project Coordinator - Burbank Operable Unit  
6           San Fernando Valley Basin Superfund Site  
7           Hazardous Waste Management Division  
8           Superfund Program, Region IX  
9           United States Environmental Protection Agency  
10          75 Hawthorne Street  
11          San Francisco, CA 94105

12   and

13           Assistant Regional Counsel - Burbank Operable Unit  
14           San Fernando Valley Basin Superfund Site  
15           Office of Regional Counsel, Regional IX  
16           United States Environmental Protection Agency  
17           75 Hawthorne Street  
18           San Francisco, CA 94105

19   As to the United States Department of Justice:

20           Chief  
21           Environmental Enforcement Section  
22           Environment and Natural Resources Division  
23           United States Department of Justice  
24           Ben Franklin Station, P.O. Box 7611  
25           Washington, D.C. 20044-7611

26   As to Lockheed:

27           Ron Helgerson  
28           Lockheed Engineering and Sciences Company  
29           1903 West Empire, Unit 33  
30           Burbank, California 91504

31   As to City:

32           General Manager  
33           City of Burbank  
34           Public Service Department  
35           164 West Magnolia Blvd.  
36           Burbank, California 91503-0631

37   and

1 Carolyn Barnes, Esquire  
2 Office of the City Attorney  
275 East Olive  
Burbank, California 91510-6459

3 As to Weber:

4 George H. Hempstead  
5 Weber Aircraft, Inc.  
100 Wood Avenue, South  
6 Iselin, New Jersey 08830

7 B. A Settling Party may change its address for purposes of  
8 this Decree by mailing notice of a change of address to the other  
9 Settling Parties.

10 C. In the case of written notices or submittals, a notice  
11 or submittal shall be deemed to have occurred on the date the  
12 notice or submittal is received by the party to whom notice must  
13 be given or a document must be submitted pursuant to this Decree.

14 XXIV. MODIFICATION

15 A. Except as provided in Subpart B of this Section and in  
16 Subpart B of Section XXIII (Form of Notice), there shall be no  
17 modification of this Consent Decree without written approval of  
18 the Settling Parties and entry by the Court.

19 B. The United States and the appropriate Settling Work  
20 Defendant(s) may agree to modify the Statement of Work and any  
21 documents or deliverables approved by EPA pursuant to this  
22 Decree. Any such modification must be in writing and must be  
23 signed by EPA and the Settling Work Defendant(s) affected by the  
24 modification, and shall be sent to all Settling Defendants within  
25 ten days of execution. No such modifications shall change (1)  
26 any of the requirements of the body of the Consent Decree (i.e.,  
27

1 the Consent Decree exclusive of those attachments which have been  
2 incorporated into the Decree by reference), (2) the ROD or (3)  
3 the ESD.

4 **XXV. ADMISSIBILITY OF DATA**

5 In the event that the Court is called upon to resolve a dis-  
6 pute concerning implementation of this Consent Decree, the Set-  
7 tling Parties waive any evidentiary objections to the admis-  
8 sibility into evidence of data gathered, generated, or evaluated  
9 pursuant to this Decree that has been verified using the quality  
10 assurance and quality control procedures specified in the Quality  
11 Assurance Project Plan(s) approved pursuant to this Decree.

12 **XXVI. EFFECTIVE DATE**

13 This Consent Decree is effective upon the date of its entry  
14 by the Court.

15 **XXVII. COMMUNITY RELATIONS**

16 The Settling Work Defendants shall cooperate with EPA and  
17 the State in providing information to the public.

18 **XXVIII. PUBLIC PARTICIPATION**

19 A. The United States will publish notice of the  
20 availability for review and comment of this Consent Decree upon  
21 its lodging with the United States District Court as a proposed  
22 settlement in this matter in accordance with CERCLA Section  
23 122(d)(2)(i), 42 U.S.C. § 9622(d)(2)(i).

24 B. The United States will provide persons who are not  
25 parties to the proposed settlement with the opportunity to file  
26 written comments during at least a thirty (30) day period follow-  
27 ing such notice. In addition, EPA intends to hold an informal

1 public meeting in Burbank, California during this period to  
2 receive either written or oral comments. The United States will  
3 file with the Court a copy of any comments received and its  
4 responses to such comments.

5 C. After the close of the public comment period, the United  
6 States will review all comments and determine whether the com-  
7 ments disclose facts or considerations which indicate that the  
8 proposed Decree is inappropriate, improper or inadequate and that  
9 it therefore should be modified. No Settling Party shall be  
10 bound by modifications to this Decree without its prior written  
11 consent, and consent to this Decree is not consent to such  
12 modifications.

13 XXIX. NOTICE TO THE STATE

14 EPA has notified the State of California pursuant to Section  
15 106(a) of CERCLA, 42 U.S.C. § 9606(a) prior to entry of this  
16 Decree.

17 XXX. CONSISTENCY WITH THE NATIONAL CONTINGENCY PLAN

18 The Settling Parties agree, and the Court finds, that the  
19 Work, if performed in accordance with the requirements of this  
20 Consent Decree, is consistent with the provisions of the NCP,  
21 pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.

22 XXXI. INDEMNIFICATION OF THE UNITED STATES

23 A.1. Notwithstanding any approvals which may be granted by  
24 the United States or other governmental entities, Lockheed shall  
25 indemnify the United States and any of its divisions, depart-  
26 ments, agents or employees and save and hold the United States,  
27 any of its divisions, departments, agents or employees harmless

1 from any claims or causes of action (except to the extent that  
2 such indemnification or holding harmless would conflict with  
3 rights or obligations of the United States or Lockheed pursuant  
4 to any contract between Lockheed and the United States or between  
5 Lockheed and any government contractor(s)), arising from any in-  
6 juries or damages to persons or property resulting from any acts  
7 or omissions of Lockheed, its contractors, subcontractors or any  
8 other person acting on its behalf in carrying out any activities  
9 pursuant to the terms of this Decree.

10 2. Notwithstanding any approvals which may be granted by  
11 the United States or other governmental entities, the City shall  
12 indemnify the United States and any of its divisions, depart-  
13 ments, agents or employees and save and hold the United States,  
14 any of its divisions, departments, agents or employees harmless  
15 from any claims or causes of action, arising from any injuries or  
16 damages to persons or property resulting from any acts or omis-  
17 sions of the City, its contractors, subcontractors or any other  
18 person acting on its behalf in carrying out any activities pur-  
19 suant to the terms of this Decree.

20 B. The indemnifications provided in Subpart A of this Sec-  
21 tion do not include an obligation to defend the United States or  
22 persons acting on its behalf in any action relating to this Con-  
23 sent Decree or the Work and do not extend to that portion of any  
24 claim or cause of action attributable to the negligent, wanton or  
25 willful acts or omissions of the United States, its contractors,  
26 subcontractors or any other person or entity acting on its behalf  
27 in carrying out activities at or related to the Site.



1        C.1. The United States shall use its best efforts to notify  
2 Lockheed of any claims or causes of action described in Subpart  
3 A.1 of this Section within sixty (60) days of receiving notice  
4 that such a claim or cause of action has been filed and shall use  
5 its best efforts to provide Lockheed with a reasonable oppor-  
6 tunity to confer with the United States before the United States  
7 settles or resolves such a claim or cause of action; provided,  
8 however, that failure on the part of the United States to provide  
9 such notice and/or such opportunity to confer shall not preclude  
10 the United States from obtaining indemnification from Lockheed  
11 pursuant to this Section.

12        2. The United States shall use its best efforts to notify  
13 the City of any claims or causes of action described in Subpart  
14 A.2 of this Section within sixty (60) days of receiving notice  
15 that such a claim or cause of action has been filed and shall use  
16 its best efforts to provide the City with a reasonable oppor-  
17 tunity to confer with the United States before the United States  
18 settles or resolves such a claim or cause of action; provided,  
19 however, that failure on the part of the United States to provide  
20 such notice and/or such opportunity to confer shall not preclude  
21 the United States from obtaining indemnification from the City  
22 pursuant to this Section.

23        3. Settling Defendants retain the right to intervene in any  
24 court action against the United States pursuant to Section 113(i)  
25 of CERCLA, 42 U.S.C. § 9613(i), if appropriate, and to seek in-  
26 tervention under the provisions of F.R.Civ.P. 24 and California  
27 Code of Civil Procedure Section 387.

1                                    **XXXII. OTHER CLAIMS**

2            This Consent Decree does not constitute a preauthoriza-  
3    tion of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. §  
4    9611(a)(2). In consideration of entry of this Consent Decree,  
5    Settling Defendants agree not to make any claims directly or in-  
6    directly against the Hazardous Substance Superfund for costs ex-  
7    pended by or on behalf of Settling Defendants in connection with  
8    this Decree under CERCLA Sections 112 or Section 106(b)(2), 42  
9    U.S.C. §§ 9612, 9606(b)(2), or any other provision of law and  
10   agree not to make any other claims against the United States for  
11   costs expended by or on behalf of any Settling Defendant in con-  
12   nection with this Consent Decree, except insofar as a Settling  
13   Defendant has reserved such rights pursuant to Subpart G of Sec-  
14   tion XVII (Reservation and Waiver of Rights).

15                                    **XXXIII. CONTINUING JURISDICTION**

16           The Court specifically retains jurisdiction over both the  
17   subject matter of and the parties to this action for the duration  
18   of this Consent Decree for the purpose of issuing such further  
19   orders or directions as may be necessary or appropriate to con-  
20   strue, "implement, modify, enforce, terminate, or reinstate the  
21   terms of this Consent Decree or for any further relief as the in-  
22   terest of justice may require.

23                                    **XXXIV. TERMINATION AND SATISFACTION**

24           A. Upon Settling Defendants' completion of all of the Work  
25   to be performed pursuant to this Consent Decree, including  
26   achievement of all of the requirements imposed upon Settling  
27   Defendants by Section VII (Work To Be Performed) and Section XVI

1 (Reimbursement of Future Response Costs), Settling Work Defen-  
2 dants shall submit to EPA a written certification (Certificate of  
3 Completion) that the Work has been completed in accordance and in  
4 full compliance with this Decree. Within ninety (90) days of  
5 receipt of a request for such certification, EPA shall approve or  
6 disapprove the certification. If EPA fails to approve or disap-  
7 prove the certification within ninety (90) days of receipt of a  
8 request for such certification, Settling Work Defendants may in-  
9 voke the dispute resolution procedures of Section XX (Dispute  
10 Resolution). Upon EPA approval of the Certification of Comple-  
11 tion, the covenants not to sue pursuant to Subpart A.1 of Section  
12 XVIII (Covenant Not To Sue) shall take effect.

13 B. Upon EPA's approval of the Certification of Completion,  
14 the requirements of this Decree, including Settling Work Defen-  
15 dants' obligations for Covered Matters, other than Section XIV  
16 (Retention of Records) and Subpart O of Section VII (Work To Be  
17 Performed), shall be deemed satisfied; provided, however, that  
18 such termination and satisfaction shall not alter the provisions  
19 of Section XVII (Reservation and Waiver of Rights), Section XXII  
20 (Contribution Protection), Section XVIII (Covenant Not To Sue) or  
21 any other continuing rights or obligations of the Settling  
22 Parties under this Decree.

23 C. If at any point EPA takes over the remainder of the  
24 Work pursuant to Section VII (Work To Be Performed), then this  
25 Decree shall terminate when EPA finishes the Work; provided,  
26 however, that termination of this Decree shall not terminate  
27 Lockheed's obligations under Section XVI (Reimbursement of Future

1 Response Costs) to pay Future Response Costs incurred before the  
2 termination of this Decree, ~~nor~~ shall it alter the provisions of  
3 Section XVII (Reservation and Waiver of Rights) or any other con-  
4 tinuing rights or obligations of the Settling Parties under this  
5 Decree.

6 **XXXV. SECTION HEADINGS**

7 The section heading set forth in this Decree and its  
8 Table of Contents are included for convenience of reference only  
9 and shall be disregarded in the construction and interpretation  
10 of any of the provisions of this Decree.

FOR THE PLAINTIFF, UNITED STATES:

*Barry H. Hartman*

BARRY H. HARTMAN  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20044

DATE: 7/29/91

United States Attorney

DATE: \_\_\_\_\_

Assistant United States Attorney

*Raymond B. Ludwinski*

RAYMOND B. LUDWINSKI  
Acting Assistant Administrator for  
Office of Enforcement  
U.S. Environmental Protection Agency  
401 M. Street, S.W.  
Washington, D.C. 20460

DATE: 5/6

*William A. Weinische*

WILLIAM A. WEINISCHE  
Trial Attorney  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Gen Franklin Station  
Washington, D.C. 20044

DATE: 7/6/91

The undersigned Defendant hereby consents to the foregoing con-  
sent Decree.

For Defendant:

The City of Burbank

Dated: March 1, 1991

Name:

Signature:

Title:

Mayor, City of Burbank

Thomas Flynn

Notary

City Clerk

1 The undersigned Defendant hereby Consents to the foregoing Con-  
2 sent Decree.  
3  
4

5 For Defendant:

Lockheed Corporation

6 Dated:

March 13, 1991

10 Name:

E. A. Thompson

11 Signature:

E. A. Thompson

12 Title:

Vice President - Operations  
Lockheed Corporation

1 The undersigned Defendant hereby Consents to the foregoing Con-  
2 sent Decree.

3  
4  
5 For Defendant:

Weber Aircraft, Inc.

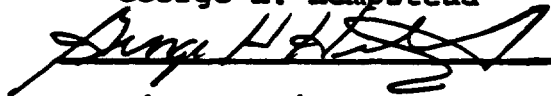
6 Dated:

March 18, 1991

7  
8  
9  
10 Name:

George H. Hempstead

11 Signature:



12 Title:

Vice President  
Weber Aircraft, Inc.



*Daniel W. McGovern*

DATE: 3.28.91

DANIEL W. MCGOVERN  
Regional Administrator  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

# **EXHIBIT 2**

1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
2 REGION IX  
3

4 In the Matter Of:

5 Burbank Operable Unit  
6 San Fernando Valley Superfund Sites

7 Aeroquip Corporation,  
8 Crane Company, (Inc.)  
9 Janco Corporation,  
10 Sargent Industries, Incorporated,  
11 Antonini Family Trust, and  
12 Ocean Technology, Incorporated,

13 Respondents  
14

U.S. EPA Docket  
No. 92 - 12

15 Proceeding Under Section 106(a)  
16 of the Comprehensive Environmental  
17 Response, Compensation, and  
18 Liability Act of 1980, as amended.  
19 42 U.S.C. § 9606(a)  
20  
21  
22  
23  
24  
25  
26  
27  
28

ADMINISTRATIVE ORDER  
FOR REMEDIAL DESIGN AND REMEDIAL ACTION

# TABLE OF CONTENTS

1			
2	I.	INTRODUCTION AND JURISDICTION . . . . .	1
3	II.	FINDINGS OF FACT . . . . .	3
4	III.	CONCLUSIONS OF LAW . . . . .	16
5	IV.	DETERMINATIONS . . . . .	17
6	V.	NOTICE TO THE STATE . . . . .	17
7	VI.	ORDER . . . . .	17
8	VII.	DEFINITIONS . . . . .	18
9	VIII.	NOTICE OF INTENT TO COMPLY . . . . .	23
10	IX.	PARTIES BOUND . . . . .	23
11	X.	WORK TO BE PERFORMED . . . . .	24
12	XI.	OBLIGATION TO COOPERATE AND COORDINATE . . . . .	39
13	XII.	ADDITIONAL RESPONSE ACTIONS . . . . .	40
14	XIII.	EPA PERIODIC REVIEW . . . . .	41
15	XIV.	ENDANGERMENT AND EMERGENCY RESPONSE . . . . .	41
16	XV.	FORM OF NOTICE . . . . .	42
17	XVI.	EPA REVIEW OF SUBMISSIONS . . . . .	44
18	XVII.	QUALITY ASSURANCE . . . . .	46
19	XVIII.	COMPLIANCE WITH APPLICABLE LAWS . . . . .	48
20	XIX.	REMEDIAL PROJECT MANAGER AND PROJECT COORDINATOR . . . . .	49
21	XX.	SITE ACCESS AND NOTIFICATION . . . . .	51
22	XXI.	DOCUMENT AVAILABILITY AND RECORD PRESERVATION . . . . .	55
23	XXII.	DELAY IN PERFORMANCE . . . . .	58
24	XXIII.	ASSURANCE OF ABILITY TO COMPLETE WORK . . . . .	59
25	XXIV.	UNITED STATES NOT LIABLE . . . . .	60
26	XXV.	ENFORCEMENT AND RESERVATION . . . . .	61
27	XXVI.	ADMINISTRATIVE RECORD . . . . .	63
28	XXVII.	CIVIL PENALTIES . . . . .	63

1	XXVIII. EFFECTIVE DATE AND COMPUTATION OF TIME . . . . .	64
2	XXIX. SECTION HEADINGS . . . . .	64
3	XXX. OPPORTUNITY TO CONFER . . . . .	64
4	XXXI. COMPLETION . . . . .	65
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 I. INTRODUCTION AND JURISDICTION

2 A. This Administrative Order (the "Order") is issued by the  
3 United States Environmental Protection Agency ("EPA") under the  
4 authority vested in the President of the United States by Section  
5 106(a) of the Comprehensive Environmental Response, Compensation,  
6 and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §  
7 9606(a). This authority was delegated to the Administrator of  
8 EPA on January 23, 1987 by Executive Order 12580 (52 Fed. Reg.  
9 2926, January 29, 1987), and was further delegated to EPA Region-  
10 al Administrators on September 13, 1987 by EPA Delegation No. 14-  
11 14-B. On October 26, 1988, this authority was re-delegated to  
12 the Director of the Hazardous Waste Management Division, EPA  
13 Region IX, by Order R1290.43. This Order is issued to the above-  
14 captioned Respondents (the "Respondents") to perform a portion of  
15 the interim remedial design and remedial action described in the  
16 Record of Decision ("ROD"), dated June 30, 1989, and the Explana-  
17 tion of Significant Differences ("ESD"), dated November 21, 1990,  
18 for the Burbank Operable Unit (the "Site," when capitalized) of  
19 the San Fernando Valley Superfund sites.

20 B. The Director of the Hazardous Waste Management Division,  
21 EPA Region IX, has determined that there may be an imminent and  
22 substantial endangerment to the public health, welfare or the  
23 environment because of the release and threatened release of  
24 hazardous substances at or from the Site. This Order directs  
25 Respondents to undertake actions that EPA has determined to be  
26 necessary to protect the public health, welfare, and the environ-  
27 ment at the Burbank Operable Unit Site.

1 C. This Order applies to the following persons, each of  
2 which is a "Respondent:"

3 1. Aeroquip Corporation, a Michigan corporation  
4 1715 Indian Wood Circle  
5 Maumee, OH 43537  
6 Service Agent:  
7 CT Corporation System  
8 818 West Seventh Street  
9 Los Angeles, CA 90017

10 2. Antonini Family Trust  
11 3050 N. San Fernando Blvd.  
12 Burbank, CA 91504  
13 Trustee:  
14 Mario E. Antonini  
15 11374 Tuxford Street  
16 Sun Valley, CA 91352

17 3. Crane Company, (Inc.) a Delaware corporation  
18 3000 Winona Avenue  
19 Burbank, CA 91504  
20 Service Agent:  
21 CT Corporation System  
22 818 West Seventh Street  
23 Los Angeles, CA 90017

24 4. Janco Corporation, a California corporation  
25 3111 Winona Avenue  
26 Burbank, CA 91504  
27 Service Agent:  
28 Joan A. McKenzie  
3111 Winona Ave.  
Burbank, CA 91504

5. Ocean Technology Inc., a California corporation  
2835 N. Naomi Street  
Burbank, CA 91504  
Service Agent:  
Thomas E. Ross  
2835 N. Naomi Street  
Burbank, CA 91504

6. Sargent Industries, Inc., a Delaware Corporation  
3010 N. San Fernando Boulevard  
Burbank, CA 91504  
Service Agent:  
CT Corporation System  
818 West Seventh Street  
Los Angeles, CA 90017

## II. FINDINGS OF FACT

### A. Site Description and Background

1. The Burbank Operable Unit Site (the "Site") consists of the areal extent of groundwater contaminated with hazardous substances that is presently located in the vicinity of the Burbank Well Field and includes any areas to which such contamination migrates. This Site is part of the much larger area of contamination which makes up the San Fernando Valley Superfund sites. The Burbank Well Field consists of ten production wells owned by the City of Burbank which are located in the eastern half of the San Fernando Valley Groundwater Basin (the "Basin"), Los Angeles County, California. These production wells were used by the City as a major source of drinking water for its 95,000 residents until contamination forced their closure.

2. The Basin has been an important drinking water resource for the Los Angeles metropolitan area, including the Cities of Burbank, Glendale and Los Angeles. In addition to supplying inexpensive water to a significant portion of Los Angeles county, the Basin can serve as a very large water storage facility. The ability to store excess water allows water purveyors to efficiently use the variable water supply of arid southern California. In times of drought, this capability becomes even more important.

3. Before the groundwater was contaminated, the City used the Burbank Well Field as a major component of its drinking water supply. The City must now purchase water from more expensive surface water supplies. The groundwater contamination which



1 forced the closure of Burbank's public drinking water supply  
2 wells was caused by the release of volatile organic compounds  
3 ("VOCs"). The contaminants with the highest concentration levels  
4 are trichloroethene ("TCE") and tetrachloroethene ("PCE"). These  
5 chemicals are commonly used for machinery degreasing, dry clean-  
6 ing, and metal plating.

7 4. Groundwater contamination was first discovered in the  
8 Basin in 1980. In 1984, four sites in the Basin were proposed  
9 for inclusion on the National Priorities List ("NPL"). In 1986,  
10 in accordance with CERCLA Section 105, 42 U.S.C. § 9605, the four  
11 San Fernando sites were listed on the NPL. The sites are: a)  
12 North Hollywood (San Fernando Valley Area 1), b) Crystal Springs  
13 (San Fernando Valley Area 2), c) Verdugo (San Fernando Valley  
14 Area 3), d) Pollock (San Fernando Valley Area 4).

15 5. The Burbank Operable Unit Site is part of the North  
16 Hollywood Area Superfund site, also known as San Fernando Valley  
17 Area 1. The Site presently includes the northeast corner of the  
18 North Hollywood Area Superfund site, as well as the areas to  
19 which the plume of TCE and PCE has spread beyond the original  
20 boundaries drawn at the time the North Hollywood (Area 1)  
21 Superfund site was listed on the NPL.

22 6. Based on the extensive scope of the groundwater  
23 contamination in the Basin, EPA decided to institute an interim  
24 remedial action at the Burbank Site as an operable unit prior to  
25 the completion of the Remedial Investigation/Feasibility Study  
26 for the Basin as a whole. This approach allows the clean-up of  
27 heavily contaminated areas to start sooner, rather than waiting  
28 for the completion of extensive, Basin-wide studies and decisions

1 on what further remedial action may be necessary in the Basin  
2 and/or at the Site.

3 7. The Los Angeles Department of Water and Power, under a  
4 cooperative agreement with EPA, completed an Operable Unit  
5 Feasibility Study ("OUFS") for the Burbank Operable Unit Site in  
6 October 1988. This OUFS set forth and analyzed a range of  
7 interim remedial action alternatives for the Site.

8 8. On June 30, 1989, EPA issued a Record of Decision  
9 ("ROD") for the Burbank Operable Unit Site, which is attached  
10 hereto as Appendix A to the Consent Decree attached as Attachment  
11 B, and incorporated herein by reference. The interim remedial  
12 alternative selected in the ROD includes design, construction,  
13 and operation of a groundwater extraction and treatment system at  
14 the Site. The system includes groundwater extraction, steam or  
15 air stripping units, vapor-phase granular activated carbon  
16 adsorption units and monitoring wells. The remedy selected in  
17 the ROD is designed to inhibit the migration of contamination in  
18 the Basin where additional downgradient public water supply wells  
19 are threatened, and to aid in aquifer restoration in the immedi-  
20 ate area of the Site. The ROD also provided for the treated  
21 water to be delivered to the City's public water supply system.

22 9. In November 1990, EPA issued an Explanation of  
23 Significant Differences ("ESD"), which modified the ROD. The ESD  
24 is attached hereto as Appendix B to the Consent Decree attached  
25 as Attachment B, and incorporated herein by reference. The ESD  
26 analyzed alternatives for addressing elevated nitrate levels,  
27 which were discovered in the groundwater after the ROD was  
28 signed. The ESD selected blending of water with high nitrate

1 levels with water not containing nitrate in excess of the Maximum  
2 Contaminant Level for all water to be delivered to the City's  
3 public water supply system. The ESD also states that water not  
4 accepted by the City into its public water supply system will be  
5 reinjected into the groundwater aquifer in a manner that does not  
6 exacerbate the existing contamination.

7 10. The ROD and ESD are supported by an Administrative  
8 Record which includes comments by the public on the Feasibility  
9 Study and EPA's proposed plan for the remedy, as well as EPA's  
10 response to these comments, as required by CERCLA Section 117, 42  
11 U.S.C. § 9617.

12 11. The California State Regional Water Quality Control  
13 Board, Los Angeles Region ("RWQCB"), has been overseeing sub-  
14 surface investigations at properties owned or operated by Respon-  
15 dents in the Burbank area. The results of these investigations  
16 and other evidence show that Respondents have contributed to the  
17 groundwater contamination at the Site.

18 12. The following list contains some of the individual  
19 properties at the Site at which contamination has been detected.  
20 Because TCE and PCE are the primary contaminants of concern to  
21 date, the discussion of contamination at each facility focuses  
22 primarily on the presence of these two substances. This listing  
23 of facilities, chemicals and releases of hazardous substances is  
24 not meant to be in any way exhaustive and does not constitute a  
25 limitation of the liability of any Respondent or any other  
26 person.

27 a. 3015 Winona Avenue. From 1951 to 1960 this property  
28 was used by Aero-Coupling Corporation (a subsidiary of Aeroquip

1 Corporation) for the manufacture of hose couplings. Aero-Coupling  
2 Corporation was dissolved in 1971 and at that time Aeroquip  
3 Corporation ("Aeroquip") acquired full title to the property.  
4 Aeroquip used the property for the manufacture of aerospace and  
5 industrial hardware (1960-69), assembly, warehousing and shipping  
6 of hose assemblies (1971-86), and manufacture of pneumatic and  
7 hydraulic cylinders (1975-86). The property was vacant from 1986-  
8 88. In 1988 the property was sold to Winona Community  
9 Associates. The facility includes or formerly included: two  
10 buildings (addresses: 3015 Winona Avenue and 2929 Floyd Street),  
11 six underground storage tanks for storing raw and waste mineral  
12 spirits and waste solvents, and five groundwater monitoring  
13 wells. Aeroquip generated wastes such as spent solvents, spent  
14 nitric acid solutions, waste oils, and spent mineral spirits at  
15 the facility. Samples of soil taken at this property indicate  
16 concentrations of trichloroethene ("TCE") as high as 61 parts per  
17 billion ("ppb"). TCE has been detected at depths of 30.5 feet.  
18 Laboratory tests on soil samples recovered from the property also  
19 detected petroleum hydrocarbons, acetone, toluene, and 2-  
20 butanone. Samples of groundwater recovered from monitoring wells  
21 located at the facility have detected levels of tetrachloroethene  
22 ("PCE") as high as 4,500 ppb and TCE as high as 3,600 ppb. The  
23 contamination at this facility may have resulted from one or more  
24 of the following: leaking underground tanks and/or pipelines,  
25 and/or surface spills.

26 b. 3000 Winona Avenue. From 1946 to the present, Crane  
27 Co. (Inc.) ("Crane") has been the owner and operator of the  
28 facility located at 3000 Winona Avenue. The facility was and is

1 presently used by Crane for the manufacture of aviation and  
2 aerospace equipment. The facility formerly included sixteen  
3 underground storage tanks for storing lubricating oils, hydraulic  
4 oils, solvents, jet fuel, fuel oil, coolants, and gasoline.  
5 Crane generates chemical wastes, such as used solvents, including  
6 PCE, methyl ethyl ketone ("MEK"), kerosene, trichloroethane  
7 ("TCA"), and freon; in the past Crane has generated TCE waste.  
8 Samples of the soil taken at this facility indicate  
9 concentrations of PCE as high as 490,000 ppb. PCE has been  
10 detected at this facility at depths of 70 feet. Chemical  
11 analysis of soil samples recovered from the facility have also  
12 detected TCA, trichlorotrifluoroethane, MEK, acetone,  
13 bromodichloromethane, dibromochloromethane, 1,2-dichloroethane  
14 ("1,2-DCA"), dichloroethene ("DCE"), methylene chloride,  
15 chloroform, oil and grease, and toluene. Samples of the  
16 groundwater taken from the five monitoring wells at the facility  
17 indicate concentrations of TCE as high as 3,200 ppb and PCE as  
18 high as 19,000 ppb. The contamination at this facility may have  
19 resulted from one or more of the following: leaking underground  
20 tanks and/or pipelines, and/or surface spills.

21 c. 3111 Winona Avenue. From 1947 to the present, Janco  
22 Corporation ("Janco") has been the owner and operator of the  
23 facility located at 3111 Winona Avenue. The facility has been  
24 and is currently used for the fabrication and assembly of  
25 switching devices and passive electrical components and hardware  
26 for aircrafts. The facility either includes or formerly included  
27 the following: barrel storage area, TCA dip degreaser, and an  
28 above ground storage tank. TCE, TCA, trichlorotrifluoroethane,

1 toluene, MEK, acids, grease, and paints are among the numerous  
2 chemicals known to have been present at this facility. Samples  
3 of the soil taken at this facility indicate concentrations of TCE  
4 as high as 16 ppb. TCE has been detected in the soil at this  
5 facility at depths of 75 feet. Concentrations of PCE as high as  
6 230 ppb have been detected in the soil. Other chemicals found in  
7 soil and soil gas samples include petroleum hydrocarbons, TCA,  
8 toluene, 1,1-Dichlorethane, chloromethane, and methylene  
9 chloride. The contamination at this facility may have resulted  
10 from mismanagement or spills of chemicals and/or wastes.

11 d. 2835 North Naomi Street. Since 1973 Ocean  
12 Technology, Inc. has been the owner and operator at this  
13 facility. The facility has been used for the manufacture of  
14 signal processing systems. The facility formerly included an  
15 underground storage tank used to store machine cutting oil and  
16 waste solvents. Samples of the soil taken at this facility  
17 indicate concentrations of TCE as high as 15 ppb at a depth of 30  
18 feet. Concentrations of PCE as high as 550 ppb have been  
19 detected in the soil. PCE has been detected at depths of 35  
20 feet. Laboratory analyses of soil samples have also detected  
21 TCA, acetone, oil and grease, toluene, dioxane, and MEK. Four  
22 groundwater monitoring wells have been constructed at or near  
23 this facility to determine the chemical composition of  
24 groundwater below this facility. Samples of groundwater from the  
25 monitoring wells have shown levels of TCE as high as 1,400 ppb.  
26 One of the monitoring wells was constructed "upgradient" of the  
27 facility; samples from this well give an indication of the  
28 quality of groundwater coming from sources other than the

1 facility. Three of the monitoring wells were constructed  
2 "downgradient" of the facility; samples from these wells give an  
3 indication of the quality of groundwater after it has flowed  
4 beneath the facility. Samples from the wells have consistently  
5 shown an increase in TCE in the groundwater after it has moved  
6 beneath the facility (i.e., lower TCE levels detected from the  
7 upgradient wells, higher TCE levels detected from the  
8 downgradient wells), indicating that the facility is a source of  
9 TCE contamination in the groundwater. The contamination at this  
10 facility may have resulted from leakage from the underground tank  
11 and/or piping, and/or surface spills.

12 e. 3010 North San Fernando Boulevard. From 1963 to the  
13 present, the Kahr Bearing Division of Sargent Industries, Inc.  
14 ("Sargent") has been the operator of the facility located at 3010  
15 N. San Fernando Boulevard; the Antonini Family Trust is the owner  
16 of the facility. Sargent has used the facility for the  
17 manufacturing of precision spherical bearings used primarily in  
18 the aerospace industry. The facility either includes or formerly  
19 included drums and underground storage tanks. As part of  
20 Sargent's manufacturing process, a variety of wastes such as  
21 solvents TCE, TCA, trichlorotrifluoroethane, and water soluble  
22 coolants, and various oils are generated. Samples of the soil  
23 taken at this facility indicate concentrations of TCE as high as  
24 52 ppb and PCE as high as 12,000 ppb. Both TCE and PCE have been  
25 detected at depths of 75 feet at this facility. Laboratory  
26 analyses of soil samples recovered from this facility have  
27 detected petroleum hydrocarbons, TCA, dichloroethene ("DCE"),  
28 methylene chloride, and chloroform. The contamination at this

1 facility may have resulted from one or more of the following:  
2 leaking underground tanks and/or pipelines, and/or surface  
3 spills.

4 B. Enforcement History

5 1. By February 1989, general notice letters had been sent  
6 by EPA to thirty-four (34) potentially responsible parties,  
7 including each of the Respondents, with the exception of the  
8 Antonini Family Trust.

9 2. In accordance with CERCLA Section 122, 42 U.S.C. §  
10 9622, EPA issued thirty-two (32) special notice letters to  
11 potentially responsible parties. Respondents received special  
12 notice letters in May 1989, with the exception of the Antonini  
13 Family Trust, which received a special notice letter in July  
14 1989. The statutory deadline of sixty days for the potentially  
15 responsible parties to make a proposal to undertake or finance  
16 the remedial action, contained in CERCLA Section 122(e)(2)(B),  
17 was extended by EPA at the request of numerous potentially  
18 responsible parties. By the extended deadline, EPA received good  
19 faith offers to undertake or finance part of the interim remedial  
20 action from four potentially responsible parties. Good faith  
21 offers were not received from any of the Respondents.

22 3. On or about March 25, 1992, the Federal District Court  
23 for the Central District of California entered a Consent Decree  
24 (the "Decree") signed by EPA, the Lockheed Corporation ("Lock-  
25 heed"), the City of Burbank (the "City") and Weber Aircraft, Inc.  
26 ("Weber"), under which Lockheed and the City agreed to implement,  
27 and Lockheed, the City and Weber agreed to finance, a portion of  
28 the interim remedial action specified in the ROD and ESD. The



1 Decree was entered pursuant to CERCLA Section 122, 42 U.S.C. §  
2 9622; it is attached hereto as Attachment B and incorporated  
3 herein by reference. Section VII, Subpart F of the Decree  
4 included some minor modifications to the interim remedy. The  
5 Consent Decree does not cover the design, construction or  
6 nonroutine maintenance of the blending facility for nitrate,  
7 related water transport and receiving facilities, and certain  
8 monitoring. These activities are required to be performed  
9 pursuant to this Order. The United States took public comment on  
10 the Decree and submitted all comments received and its reply to  
11 such comments to the Federal District Court prior to the entry of  
12 the Decree by the Court.

13 C. Endangerment to Human Health and the Environment

14 1. Concentrations of volatile organic compounds ("VOCs")  
15 exceeding State Action Levels ("SALs") and Federal Maximum  
16 Contaminant Levels ("MCLs") were first discovered in the Basin in  
17 1980. Since that time, EPA and the State have conducted soil and  
18 groundwater sampling in the Burbank area. Presently, VOC family  
19 members trichloroethene ("TCE") and tetrachloroethene ("PCE")  
20 have been found in the Burbank Well Field at levels that exceed  
21 the SALs and MCLs for these hazardous substances.

22 2. The maximum concentrations of TCE and PCE found in the  
23 City's Public Service Department ("PSD") wells were 1,800  
24 micrograms per liter ("µg/L") and 590 µg/L, respectively. The  
25 MCL and SAL for both TCE and PCE is 5 µg/L. Several other VOCs  
26 have been detected at levels below MCLs in the Burbank PSD wells,  
27 including acetone, toluene, methyl ethyl ketone ("MEK"), carbon  
28 tetrachloride, and trihalomethanes. Because TCE and PCE have

1 been identified as the chemicals of primary concern at the Site,  
2 the endangerment information provided here focuses on these two  
3 hazardous substances. Some of the other hazardous substances  
4 found at the Site are also listed.

5 a. Based upon evidence of animal carcinogenicity and  
6 preliminary data on human subjects, EPA has determined that TCE  
7 and PCE are probable human carcinogens.

8 b. Trichloroethene ("TCE"). TCE is a central nervous  
9 system depressant following acute or chronic exposure.  
10 Industrial use of TCE may also result in dermatitis from exposure  
11 to vapors of concentrated solvent. In mice, an increased inci-  
12 dence of hepatocellular carcinomas was reported following oral  
13 administration of TCE.

14 c. Tetrachloroethene ("PCE"). PCE results in an  
15 increased incidence of hepatocellular carcinoma in mice. Toxic  
16 effect in humans and animals from both acute and chronic exposure  
17 to PCE include central nervous system depression, and liver and  
18 kidney damage.

19 d. Dichloroethene ("DCE"). DCE has been reported to  
20 significantly increase the incidence of kidney tumors in male  
21 mice. DCE is mutagenic and has caused adverse reproductive  
22 effects in rats and rabbits. Chronic exposure to DCE causes  
23 liver damage, and acute exposure to high doses produces nervous  
24 system damage. EPA has classified DCE as a possible human  
25 carcinogen. EPA has established a drinking water MCL of 7 ppb and  
26 the State of California has established a State MCL of 6 ppb for  
27 1,1-DCE.

28 e. Trichloroethane ("TCA"). TCA has been associated

1 with central nervous system depression and cardiovascular  
2 effects, including premature ventricular contractions and  
3 arrhythmias from exposure to high levels. EPA has established a  
4 drinking water MCL of 200 ppb for 1,1,1-TCA.

5 f. Chloroform. Chloroform has been reported to cause  
6 an increase in kidney epithelial tumors in rats and  
7 hepatocellular tumors in mice. Evidence from human  
8 epidemiological studies suggests that exposure to chloroform in  
9 water supplies may be associated with increased incidences of  
10 bladder, colon, and rectal tumors. Acute exposure to high  
11 concentrations of chloroform in humans may result in death caused  
12 by ventricular fibrillation. Chronic exposure to lower  
13 concentrations may lead to hepatic, renal, and cardiac effects,  
14 and central nervous system depression. EPA has classified  
15 chloroform as a probable human carcinogen. EPA has established a  
16 drinking water MCL of 100 ppb for total trihalomethanes  
17 (chloroform is one of the four trihalomethanes included in this  
18 regulation).

19 3. The first closures of the City's PSD wells due to  
20 groundwater contamination occurred in 1985. By 1991, all of the  
21 City's wells had been taken out of service due to high levels of  
22 TCE and PCE in the water at the Site. The plume of contamination  
23 continues to spread toward downgradient production wells operated  
24 by the Cities of Glendale and Los Angeles, threatening these  
25 public drinking water sources. The interim remedial action is  
26 necessary to inhibit the further migration of contamination.

27 4. There have been releases of hazardous substances from  
28 each of the facilities listed in Paragraph II.A.12, above, into

1 the soil and groundwater at the Site. There continue to be  
2 releases and the threat of releases from each of these facilities  
3 into the groundwater at the Site. Hazardous substances from each  
4 of the referenced facilities have commingled at the Site, forming  
5 a mass of contaminated groundwater (the "Burbank Operable Unit  
6 Plume"). The Burbank Operable Unit Plume contains hazardous  
7 substances that continue to release and/or that threaten further  
8 releases into the environment in the area of the Site through  
9 migration of the plume.

10 5. The releases and the threat of releases at the Site  
11 may present an imminent and substantial endangerment to public  
12 health due to the contamination of groundwater in the area,  
13 including contamination of the City's drinking water supply, as  
14 well as the threat of contamination of the water supplies of the  
15 Cities of Glendale and Los Angeles, located downgradient of the  
16 City of Burbank's supply wells. If remedial action is not taken,  
17 these residents may be exposed to contaminated groundwater at or  
18 from the Burbank Operable Unit Plume through ingestion of,  
19 inhalation of, and dermal contact with contaminated water. Each  
20 of these pathways represents a distinct risk to public health.  
21 The residents of the Cities of Glendale and Los Angeles also face  
22 the threat of future exposure through similar routes if the  
23 selected interim action is not implemented.

24 6. The releases and threat of releases at the Site may  
25 also present an imminent and substantial endangerment to the  
26 environment in the area of the Site because of the ongoing  
27 releases and/or threat of releases from the Plume. Without the  
28 institution of the interim remedial action, the ecosystem in the

1 area of the Site is threatened by the potential exposure to  
2 extracted, untreated water, which may reach areas of ecological  
3 concern, including the Los Angeles River.

### 4 III. CONCLUSIONS OF LAW

5 A. The Burbank OU Site, and each facility described in  
6 Paragraph II.A.12 above, is a "facility" as that term is defined  
7 in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

8 B. Each Respondent is a "person" as defined in Paragraph  
9 101(21) of CERCLA, 42 U.S.C. § 9601(21).

10 C. Each of the Respondents is a "liable person" within the  
11 meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3),  
12 and is subject to this Order pursuant to Section 106(a) of  
13 CERCLA, 42 U.S.C. § 9606(a).

14 D. The substances listed in Paragraph II.C.2 are "hazardous  
15 substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §  
16 9601(14).

17 E. There have been and continue to be "releases" and the  
18 threat of "releases" of hazardous substances, within the meaning  
19 of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), into the  
20 environment from each of the facilities referenced in Paragraph  
21 II.A.12. The hazardous substances released from these facilities  
22 have become commingled in the groundwater plume in such a way as  
23 to represent an indivisible injury.

24 F. There have been and continue to be "releases" and the  
25 threat of "releases" within the meaning of Section 101(22) of  
26 CERCLA, 42 U.S.C. § 9601(22), of hazardous substances listed in  
27 Paragraphs II.C.2 from the Site into the environment surrounding  
28 the Plume. The continued migration of hazardous substances from

1 the Site constitutes a "release," within the meaning of CERCLA  
2 Section 101(22), 42 U.S.C. § 9601(22).

3 **IV. DETERMINATIONS**

4 A. Based on the Findings of Fact and Conclusions of Law, the  
5 Director of the Hazardous Waste Management Division, EPA Region  
6 IX, hereby determines that the release and/or threat of release  
7 of one or more hazardous substances from and within the Site may  
8 present an imminent and substantial endangerment to public  
9 health, welfare or the environment. The groundwater  
10 contamination at this Site and the resulting endangerment  
11 constitute an indivisible injury.

12 B. The remedial measures required by this Order, if  
13 performed in accordance with the requirements of this Order, are  
14 necessary to protect the public health, welfare and the  
15 environment.

16 C. The remedial measures required by this Order are  
17 consistent with CERCLA and the NCP.

18 **V. NOTICE TO THE STATE**

19 Prior to issuing this order, EPA notified the State of  
20 California, California Environmental Protection Agency pursuant  
21 to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), of EPA's intent  
22 to issue this Order.

23 **VI. ORDER**

24 Based on the foregoing, Respondents are hereby ordered to  
25 comply with the following provisions, including but not limited  
26 to all requirements, schedules and deadlines contained in this  
27 Order, incorporated into this Order by reference, submitted or  
28 prepared by Respondents and approved by EPA pursuant to this

1 Order or issued or modified by EPA pursuant to this Order:

2 VII. DEFINITIONS

3 Unless otherwise expressly provided herein, terms used in  
4 this Order which are defined in CERCLA or in regulations promul-  
5 gated under CERCLA shall have the meaning assigned to them in the  
6 statute or its implementing regulations. Whenever terms listed  
7 below are used in this Order or in the documents attached to this  
8 Order or incorporated by reference into this Order (other than  
9 the Consent Decree, including all of its appendices, attached as  
10 Attachment B), the definitions which follow shall apply. Any  
11 word used in the Consent Decree that is defined in the Decree,  
12 shall have the meaning provided for it in the Decree when used in  
13 the Decree.

14 A. "Burbank Well Field" or "Well Field" shall mean the area  
15 within the political boundaries of the City encompassing Burbank  
16 Public Service Department wells 6A, 7, 10, 11A, 12, 13A, 14A, 15,  
17 17, and 18, as shown on Appendix C to the Decree, which is  
18 incorporated herein as Attachment B. (This Appendix contains  
19 corrections to the well numbers shown in Figure 2 of the ESD).

20 B. "CERCLA" shall mean the Comprehensive Environmental  
21 Response, Compensation, and Liability Act of 1980, as amended, 42  
22 U.S.C. §§ 9601 et seq.

23 C. "City" shall mean the City of Burbank, California, a  
24 charter city, and any of its divisions, departments and other  
25 subdivisions. "City" shall not include any joint powers authori-  
26 ty of which the City of Burbank is a member.

27 D. "Consent Decree" or "Decree" shall mean the Consent  
28 Decree entered by the Federal District Court for the Central

1 District of California on or about March 25, 1992 in Case No. CV  
2 91-4527 MRP(Tx), United States v. Lockheed Corporation, Inc. et

3 al. The Decree, including all of its Appendices is attached  
4 hereto as Attachment B and is incorporated herein by reference.

5 E. "Day" shall mean a calendar day, unless expressly stated  
6 to be a working day; provided, however, that in computing any  
7 period of time under this Order, where the last day would fall on  
8 a Saturday, Sunday, or federal or State holiday, the period shall  
9 run until the close of business of the next working day.

10 F. "Environment" shall have the meaning set forth in CERCLA  
11 Section 101(8), 42 U.S.C. § 9601(8).

12 G. "EPA" shall mean the United States Environmental Protec-  
13 tion Agency.

14 H. "Explanation of Significant Differences" ("ESD") shall  
15 mean the document signed by the EPA Region IX Regional Adminis-  
16 trator on November 21, 1990 which modifies the ROD and is  
17 attached as Appendix B to the Consent Decree.

18 I. "Fund" or "Superfund" shall mean the Hazardous Substance  
19 Superfund, referenced in Section 111 of CERCLA, 42 U.S.C. § 9611.

20 J. "Lockheed" shall mean the Lockheed Corporation, incor-  
21 porated in the state of Delaware, and any of its subsidiaries,  
22 parents, affiliates, predecessors and successors.

23 K. "National Contingency Plan" or "NCP" shall mean the  
24 National Contingency Plan promulgated pursuant to Section 105 of  
25 CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300.

26 L. "Paragraph" shall mean a portion of this Order identified  
27 by an Arabic numeral.

28 M. "Performance Standards" shall mean those cleanup



standards, standards of control, and other substantive requirements, criteria or limitations, identified in the ROD, ESD and this Order, that the Work required by this Order must attain and maintain.

N. "Point of Delivery" shall mean the physical point of transfer of the groundwater treated by Lockheed from Lockheed to the City. For the purposes of this Order, such transfer shall take place at the downstream flange of a meter that is located between the groundwater Treatment Plant built by Lockheed and the Valley Forebay Facility and is used to measure the quantity of water to be transferred, as depicted in Appendix E to the Decree.

O. "Point of Interconnection" shall mean the physical point of transfer of the groundwater treated by Lockheed after it goes through the booster station but before it enters the blending facilities to be constructed pursuant to this Order. For purposes of this Order, such transfer shall take place at the upstream flange of a water meter located on a pipeline between the booster station and the blending facilities and used to measure the quantity of water to be transferred, as depicted in Appendix E to the Decree.

P. "Point of MWD Connection" shall mean the physical point of transfer of the Metropolitan Water District ("MWD") blending water from the MWD pipeline to the blending facilities to be constructed pursuant to this Order. For the purposes of this Order, such transfer shall take place at the downstream flange of a meter that is located between the MWD pipeline and the blending facilities and is used to measure the quantity of water to be transferred, as depicted in Appendix E to the Decree.

1 Q. "Point of Water System Introduction" shall mean the  
2 physical point of transfer of the blended water from the blending  
3 facilities to be constructed pursuant to this Order to the City's  
4 public water supply distribution system. For the purposes of  
5 this Order, such transfer shall take place at the downstream  
6 flange of a valve located on the pipeline between the blending  
7 facilities and the City's public water supply distribution  
8 system, as depicted in Appendix E to the Decree.

9 R. "Record of Decision" ("ROD") shall mean the document  
10 signed on June 30, 1989, by the EPA Region IX Deputy Regional Ad-  
11 ministrator, acting for the Regional Administrator, which is  
12 attached as Appendix A to the Decree.

13 S. "Release" shall have the meaning set forth in CERCLA  
14 Section 101(22), 42 U.S.C. § 9601(22).

15 T. "Remedial Action Work" shall mean those activities to be  
16 undertaken by Respondents to implement the final plans and  
17 specifications submitted by Respondents pursuant to the Remedial  
18 Design Work Plan approved by EPA pursuant to Section X (Work To  
19 Be Performed) of this Order. The Remedial Action Work does not  
20 constitute all of the interim remedial action selected in the ROD  
21 (as modified by the ESD).

22 U. "Remedial Design Work" shall mean the phase of the Work  
23 required by this Order wherein, consistent with the ROD (as  
24 modified by the ESD), this Order and the National Contingency  
25 Plan, 40 C.F.R. Section 300 et seq. ("NCP"), the engineering  
26 plans and technical specifications are to be developed by Respon-  
27 dents for approval by EPA, and on which implementation of the  
28 Remedial Action Work shall be based.

1 V. "Respondents" shall mean those parties listed as such in  
2 Subpart I.C of this Order.

3 W. "Section" shall mean a portion of this Order identified  
4 by a Roman numeral.

5 X. "Site" (when capitalized) or "Burbank Operable Unit Site"  
6 shall mean the areal extent of TCE and/or PCE groundwater contam-  
7 ination that is presently located in the vicinity of the Burbank  
8 Well Field and including any areas to which such groundwater  
9 contamination migrates.

10 Y. "State" (when capitalized) shall mean the State of  
11 California.

12 Z. "Subpart" shall mean a portion of this Order identified  
13 by a capital letter.

14 AA. "United States" shall mean the United States of America.

15 AB. "Valley Forebay Facility" shall mean the structure owned  
16 by the City and designated to receive the water treated by  
17 Lockheed as a regulating reservoir for the booster station  
18 depicted in Appendix E to the Decree. The reservoir has an  
19 overflow elevation of 655 feet.

20 AC. "Weber" shall mean Weber Aircraft, Inc., incorporated in  
21 the state of Delaware, and any of its subsidiaries, parents,  
22 affiliates, predecessors and successors.

23 AD. "Work" shall mean the performance of the Remedial Design  
24 Work and the Remedial Action Work in a manner which accomplishes  
25 all of the requirements of Section X (Work To Be Performed) of  
26 this Order.

27 AE. "Working Day" shall mean a day other than a Saturday,  
28 Sunday, or federal or State holiday.

VIII. NOTICE OF INTENT TO COMPLY

Each Respondent shall provide, not later than ten (10) days after the effective date of this Order, written notice to EPA's Remedial Project Manager ("RPM") stating whether or not that Respondent intends to comply with the terms of this Order. If a Respondent does not unequivocally commit to perform the Work as provided by this Order or fails to notify EPA of its intent to comply in the timeframe and manner specified in this Section, that Respondent shall be deemed to have violated this Order and to have failed or refused to comply with this Order. Each Respondent's written notice shall describe, using facts that exist on or prior to the effective date of this Order, any "sufficient cause" defenses asserted by that Respondent under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3). The absence of a response by EPA to the notice required under this paragraph shall not be deemed to be acceptance of or agreement with any of Respondents' assertions.

IX. PARTIES BOUND

A. This Order shall apply to and be binding upon each Respondent identified in Subpart I.C and each Respondent's respective agents, contractors, subcontractors, successors, and assigns. Respondents are jointly and severally responsible for carrying out all of the Work required by this Order. No change in the ownership, corporate status, or other control of any Respondent shall alter any of the Respondents' responsibilities under this Order.

B. Each Respondent shall provide a copy of this Order to any prospective owner or successor before a controlling interest in

1 that Respondent's assets, property rights, or stock are  
2 transferred to the prospective owner or successor. Respondents  
3 shall provide a copy of this Order to each contractor,  
4 subcontractor, laboratory, or consultant retained to perform any  
5 Work under this Order, within ten (10) days after the effective  
6 date of this Order or on the date such services are retained,  
7 whichever date occurs later. Each Respondent shall also  
8 condition all contracts and subcontracts entered into with  
9 respect to the Work upon performance of the Work in conformity  
10 with the terms of this Order. With regard to the activities  
11 undertaken pursuant to this Order, each contractor and subcon-  
12 tractor shall be deemed to be related by contract to the Respon-  
13 dents within the meaning of Section 107(b)(3) of CERCLA, 42  
14 U.S.C. § 9607(b)(3). Notwithstanding the terms of any contract,  
15 Respondents are responsible for compliance with this Order and  
16 for ensuring that their contractors, subcontractors and agents  
17 comply with this Order and perform any Work in accordance with  
18 this Order.

19       c. Not later than five (5) days prior to any transfer by a  
20 Respondent of any real property identified in Paragraph II.A.12,  
21 the applicable Respondent(s) shall submit a true and correct copy  
22 of its transfer document(s) to EPA, and shall identify the  
23 transferee by name, principal business address, and the effective  
24 date of the transfer.

#### 25                               X. WORK TO BE PERFORMED

##### 26               A. General Obligations

27               1. Respondents shall be responsible, jointly and  
28 severally, for financing and performing the Work as required by

1 this Order. In the event of insolvency or other failure of any  
2 one or more of the Respondents to perform any portion of the  
3 Work, any remaining Respondent(s) shall complete such  
4 requirements.

5 2. Respondents shall perform the Work in accordance with  
6 the NCP, and all amendments thereto, and in accordance with the  
7 standards, requirements, specifications, and any schedules  
8 contained in this Order, incorporated into this Order by  
9 reference, submitted or prepared by Respondents and approved by  
10 EPA pursuant to this Order or issued or modified by EPA pursuant  
11 to this Order. Respondents shall ensure that:

12 a. all designs, workplans, and proposals submitted  
13 pursuant to this Order are consistent with (1) the NCP, (2) EPA  
14 *Guidance on Remedial Design and Remedial Action*, OSWER Directive  
15 9355.04A (June 1986), and (3) any other appropriate EPA guidances  
16 provided to Respondents by EPA;

17 b. all worker health and safety plans prepared pursuant  
18 to this Order satisfy the requirements of (1) Part 1920 of Title  
19 29 of the Code of Federal Regulation (54 Fed. Reg. 9294, March 6,  
20 1989), (2) U.S. Department of Health and Human Services  
21 *Occupational Safety and Health Guidance for Hazardous Waste Site*  
22 *Activities* (October 1985 DHHS (NIOSH) Publication No. 85-115),  
23 (3) U.S. EPA *Standard Operating Safety Guides* (July 1988), and  
24 (4) any other applicable requirements; and

25 c. all quality assurance plans prepared pursuant to  
26 this Order follow the guidelines listed in Section XVII (Quality  
27 Assurance).

28 3. Unless otherwise directed by EPA, no Respondent shall

perform any Remedial Action Work under this Section X (Work To Be Performed) prior to EPA's approval of such Work.

4. Respondents shall appoint a representative (the "Project Coordinator") to act on their behalf to execute the Work, in accordance with Section XIX (Remedial Project Manager and Project Coordinator).

5. All personnel performing Work shall be qualified to perform those portions of the Work which they are assigned. Respondents shall submit evidence that all portions of the Work will be performed (not merely reviewed) by personnel qualified to perform those portions of the Work which they are assigned.

6. All Remedial Design Work shall be under the direction of a qualified professional architect/engineer. In the timeframe provided in the Work Schedule (attached as Attachment A and incorporated herein by reference), Respondents shall notify EPA in writing of the name, title, and qualifications of the architect/engineer proposed to supervise and direct the Remedial Design Work to be performed pursuant to this Order. Selection of any such architect/engineer shall be subject to disapproval by EPA. The submitted information about the proposed architect/engineer shall include a written statement of qualifications in sufficient detail to allow EPA to make a full and timely evaluation. If at any time, Respondents propose to change the selected architect/engineer, the Respondents shall give written notice to EPA of the name, title and qualifications of the proposed architect/engineer. Any such change shall be subject to disapproval by EPA.

7. If EPA disapproves of the selection of the archi-

1 tect/engineer, Respondents shall submit to EPA within thirty (30)  
2 days after receipt of EPA's disapproval of the architect/engineer  
3 previously selected, a list of at least three  
4 architects/engineers and their qualifications, including primary  
5 support entities and staff, that would be acceptable to Respon-  
6 dents. EPA will thereafter provide notice to Respondents of the  
7 architects/engineers on the list that are acceptable to EPA (if  
8 any). Respondents may then select any approved archi-  
9 tect/engineer from that list and shall notify EPA of the name of  
10 the architect/engineer selected within fifteen (15) days of EPA's  
11 designation of acceptable architects/engineers.

12 8. All Remedial Action Work shall be under the direction  
13 of a qualified professional engineer. In the timeframe provided  
14 in the Work Schedule, Respondents shall notify EPA in writing of  
15 the name, title, and qualifications of the engineer proposed to  
16 supervise and direct the Remedial Action Work to be performed  
17 pursuant to this Order. Selection of any such engineer shall be  
18 subject to disapproval by EPA. The submitted information about  
19 the proposed engineer shall include a written statement of  
20 qualifications in sufficient detail to allow EPA to make a full  
21 and timely evaluation. If at any time, Respondents propose to  
22 change the selected engineer, the Respondents shall give written  
23 notice to EPA of the name, title and qualifications of the  
24 proposed engineer. Any such change shall be subject to  
25 disapproval by EPA.

26 9. If EPA disapproves of the selection of the engineer,  
27 Respondents shall submit to EPA within thirty (30) days after  
28 receipt of EPA's disapproval of the engineer previously selected,



1 a list of at least three engineers and their qualifications,  
2 including primary support entities and staff, that would be  
3 acceptable to Respondents. EPA will thereafter provide notice to  
4 Respondents of the names of the engineers on the list that are  
5 acceptable to EPA (if any). Respondents may then select any  
6 approved engineer from that list and shall notify EPA of the name  
7 of the engineer selected within fifteen (15) days of EPA's  
8 designation of acceptable engineers.

9 10. In the timeframe provided in the Work Schedule, the  
10 Respondents shall submit the names of its Remedial Action  
11 Contractors/Subcontractors to EPA and shall state in such  
12 submission whether the Contractors/Subcontractors were retained  
13 by way of a construction contract or through the assignment of  
14 the Respondents' in-house resources. Within thirty (30) days of  
15 a request by EPA, the Respondents shall provide the  
16 qualifications of the Contractors or Subcontractors listed in  
17 their requests for approval by EPA. The information submitted  
18 shall include a statement of qualification in sufficient detail  
19 to allow EPA to make a full and timely evaluation.

20 11. If EPA disapproves of the selection of the Remedial  
21 Action Contractors/Subcontractors, Respondents shall submit to  
22 EPA within thirty (30) days after receipt of EPA's disapproval of  
23 the Contractors/Subcontractors previously selected, a list of at  
24 least three Contractors/Subcontractors and their qualifications,  
25 including primary support entities and staff, that would be  
26 acceptable to Respondents. EPA will thereafter provide notice to  
27 Respondents of the names of the Contractors/Subcontractors on the  
28 list that are acceptable to EPA (if any). Respondents may then

1 select any approved Contractor/Subcontractor from that list and  
2 shall notify EPA of the name of the engineer selected within  
3 fifteen (15) days of EPA's designation of acceptable  
4 Contractors/Subcontractors.

5 12. In the timeframe provided in the Work Schedule and  
6 prior to initiation of any construction activities, the  
7 Respondents shall submit the names and qualifications of their  
8 Independent Quality Assurance Team ("IQAT") for approval by EPA.  
9 The IQAT shall be used to provide confidence to the Respondents  
10 that the selected remedy is constructed to meet project  
11 requirements, but its use shall not release the Respondents from  
12 any of their obligations under this Order. The IQAT implements  
13 testing and inspecting the work of the Remedial Action Engineer.  
14 Each IQAT member is required to be "independent" and autonomous  
15 from the Remedial Action Engineer and may come from within the  
16 ranks of the Respondents' own staff, the Remedial Design  
17 Architect/Engineer organization, or through a separate  
18 contractual relationship with a private consulting entity. EPA  
19 approval will be based in part on the requirement for  
20 independence between the IQAT and the Remedial Action Engineer.  
21 The information to be submitted shall include a written statement  
22 of qualifications in sufficient detail to allow EPA to make a  
23 full and timely evaluation of the IQAT's qualifications.

24 13. If EPA disapproves of the selection of the Remedial  
25 Action IQAT, Respondents shall submit to EPA within thirty (30)  
26 days after receipt of EPA's disapproval of the IQAT previously  
27 selected, a list of at least three IQATs and the team's  
28 qualifications, including primary support entities and staff,

1 that would be acceptable to Respondents. EPA will thereafter  
2 provide notice to Respondents of the names of the IQATs on the  
3 list that are acceptable to EPA (if any). Respondents may then  
4 select any approved IQAT from that list and shall notify EPA of  
5 the name of the IQAT selected within fifteen (15) days of EPA's  
6 designation of acceptable IQATs.

7 14. Prior to the start of construction, the Respondents  
8 shall schedule and initiate a pre-construction conference. At a  
9 minimum, the invitees shall include: Respondents' Project  
10 Coordinator; Lockheed's Project Coordinator, the City's Project  
11 Coordinator; the EPA Remedial Project Coordinator and any  
12 designated EPA Oversight Representatives; Respondents' Remedial  
13 Design Architect/Engineer; Respondents' Independent Quality  
14 Assurance Team; Respondents' Remedial Action Engineer; and  
15 representatives of California Department of Health Services  
16 Office of Drinking Water.

17 The main purpose of the pre-construction conference will  
18 be to establish relationships among these parties, including  
19 lines of communication.

20 15. During the implementation of the Remedial Action  
21 Work, the Respondents shall be responsible for assuring access  
22 for the EPA Project Coordinator and/or the Oversight  
23 Representatives to the extent it is required to provide access  
24 pursuant to Section XX (Site Access and Notification) of this  
25 Order. Respondents shall provide, at their own expense, access  
26 to accommodations or office trailer space sufficient for the EPA  
27 Project Coordinator and/or Oversight Representatives to  
28 accomplish oversight duties with respect to Respondents'

1 activities, such as review of documents and reports.

2 16. Upon completion of the construction process (with the  
3 exception of non-routine maintenance), Respondents shall conduct  
4 a pre-final and final inspection of completed Work. At a  
5 minimum, the invitees shall include Respondents and/or their  
6 representatives, including the Respondents' Project Coordinator;  
7 Lockheed's Project Coordinator; the City's Project Coordinator;  
8 the EPA Remedial Project Coordinator and any designated EPA  
9 Oversight Representatives; Respondents' Remedial Design  
10 Architect/Engineer; Respondents' Independent Quality Assurance  
11 Team; Respondents' Remedial Action Engineer; and representatives  
12 of the California Department of Health Services Office of  
13 Drinking Water.

14 The purpose of the inspections is to determine if all  
15 aspects of the plans and specifications have been implemented at  
16 the Site and whether the facilities to be constructed pursuant to  
17 this Order are operational and functional. If any items have not  
18 been completed, Respondents shall develop a punch list which  
19 details the outstanding items still requiring completion or  
20 correction.

21 A final inspection shall be conducted when all the items  
22 on the punch list have been completed. All items indicated as  
23 requiring correction on the punch list shall be reinspected, and  
24 all tests that were originally unsatisfactory shall be conducted  
25 again. A final punch list shall be developed for any outstanding  
26 deficiencies still requiring correction.

27 17. Respondents shall submit for review and approval each  
28 of the deliverables listed in the Work Schedule (except the

1 Health and Safety Plan, see below) and shall submit for review  
2 the monthly progress reports and the quarterly quality assurance  
3 reports described in Subpart X.C of this Order and the Health and  
4 Safety Plan required by Paragraph X.C.4 of this Order. Any  
5 failure by Respondents to submit any deliverable required by this  
6 Order in compliance with any schedule or deadline contained in  
7 this Order, incorporated into this Order by reference, submitted  
8 or prepared by Respondents and approved by EPA pursuant to this  
9 Order or issued or modified by EPA pursuant to this Order  
10 (including any failure to submit a required monthly progress  
11 report or quarterly quality assurance report) shall be deemed a  
12 violation of this Order.

13 18. Respondents shall cooperate with EPA in providing  
14 information regarding the Work to the public. As requested by  
15 EPA, Respondents shall participate in the preparation of  
16 information for distribution to the public and in public meetings  
17 which may be held or sponsored by EPA, or in which EPA is a  
18 participant, to explain activities at or relating to the Site.

19 B. Description of the Work To Be Performed

20 The Work to be performed pursuant to this Order includes all  
21 activities necessary to accomplish the tasks described in  
22 Subparts B.1 through B.2, below. Respondents shall:

23 1. Design and construct all facilities necessary to:

24 a. receive 9,000 gallons per minute ("gpm") of  
25 disinfected groundwater at the Point of Interconnection;

26 b. blend such disinfected groundwater with MWD supplied  
27 water ("blending water") to achieve a combined water supply in  
28 the amount of 18,000 gpm ("blended water");

1 c. transport the disinfected groundwater from the Point  
2 of Interconnection to the blending facilities to be located  
3 between the City's Main Booster Station and North Hollywood Way  
4 on the property shown in Appendix F of the Consent Decree  
5 attached as Attachment B;

6 d. transport 12,000 gpm of blending water from its MWD  
7 source near the intersection of Greg Avenue and San Fernando Road  
8 to the blending facilities so as to meet system requirements;

9 e. transport 18,000 gpm of blended water from the  
10 blending facilities to the Point of Water System Introduction so  
11 as to meet system requirements;

12 f. perform monitoring necessary to design, construct,  
13 operate and maintain facilities described in Subparts 1.a through  
14 1.e of this Section; and

15 g. monitor the effectiveness of the foregoing facili-  
16 ties in achieving the blending standards established by Section  
17 VII Subpart H of the Consent Decree.

18 2. Perform any non-routine maintenance with respect to  
19 the facilities described in Subparts 1.a through 1.e of this  
20 Section for the twenty (20) year time period of operation and  
21 maintenance required by the interim remedial action, unless  
22 Respondents are ordered to cease performing such non-routine  
23 maintenance by EPA.

24 C. Deliverables

25 The deliverables described in this Subpart, with the exception of  
26 the Monthly Progress Reports and the Quarterly Quality Assurance  
27 Reports, shall be submitted to EPA, EPA's contractor CH2M Hill,  
28 the California Department of Health Services Office of Drinking

1 Water, California Regional Water Quality Control Board, Lockheed,  
2 and the City in the timeframe provided in the Work Schedule,  
3 unless EPA modifies such schedule in writing.

4 1. MONTHLY PROGRESS REPORTS: Respondents shall provide  
5 written Monthly Progress Reports to EPA. These Progress Reports  
6 shall be submitted by the 10th of each month for the work done  
7 the preceding month and planned for the current month. The first  
8 Monthly Progress Report pursuant to this Order will be due by the  
9 tenth day of the calendar month immediately following the  
10 effective date of this Order. The Progress Reports shall include  
11 a general description of the activities commenced or completed  
12 during the reporting period, activities expected to be commenced  
13 or completed during the next reporting period, and any  
14 significant problems that have been encountered or are  
15 anticipated during the reporting period and actions being taken  
16 to rectify these problems. Each Monthly Progress Report shall  
17 specifically address any coordination activities undertaken with  
18 Lockheed and the City pursuant to Section XI (Obligation to  
19 Cooperate and Coordinate) and future coordination plans.

20 2. QUARTERLY QUALITY ASSURANCE REPORTS: Respondents  
21 shall include a Quality Assurance Report to EPA as part of its  
22 Monthly Progress Reports for the months of January, April, July  
23 and October of each year. Such Reports shall contain information  
24 demonstrating that Respondents are complying with the  
25 requirements of Section XVII (Quality Assurance) in performing  
26 the Work.

27 3. REMEDIAL DESIGN WORKPLAN

28 a. In accordance with the timeframe set forth in the

1 Work Schedule, Respondents shall submit a Remedial Design  
2 Workplan. The Remedial Design Workplan shall describe the plan  
3 for the implementation of the Remedial Design Work.

4 b. The Remedial Design Workplan shall contain at a  
5 minimum the following:

- 6 (1) Tentative description of the design team;
- 7 (2) Plan that describes the necessary  
8 coordination with Lockheed and the City;
- 9 (3) Detailed description of the tasks and  
10 deliverables that Respondents will complete  
11 during the remedial design phase;
- 12 (4) Detailed schedule for completion of the tasks  
13 and deliverables that is consistent with the  
14 time-frames set forth in this Order;
- 15 (5) Design criteria and assumptions;
- 16 (6) Requirements for additional data collection;
- 17 (7) Engineering procedures manual that fully  
18 describes the procedures for generating,  
19 reviewing, checking, issuing, and correcting  
20 engineer and design documents;

21 4. HEALTH AND SAFETY PLAN

22 a. In accordance with the timeframe provided in the  
23 Work Schedule, Respondents shall submit a plan that describes the  
24 minimum health, safety and emergency response requirements for  
25 the pre-design, design and Remedial Action Work activities to be  
26 undertaken by the Respondents. The plan shall be prepared in  
27 accordance with the U.S. Occupational Safety and Health  
28 Administration ("OSHA") requirements and any other applicable



1 requirements.

2 5. PLAN FOR SATISFACTION OF PERMITTING REQUIREMENTS

3 a. In accordance with the timeframe provided in the  
4 Work Schedule, the Respondents shall submit a plan that describes  
5 the permitting requirements for the Remedial Action Work  
6 activities to be undertaken by the Respondents and a strategy for  
7 meeting such requirements.

8 6. SITE QUALITY ASSURANCE PROJECT PLAN

9 a. A Quality Assurance Project Plan ("QAPP") shall be  
10 prepared by the Respondents pursuant to Section XVII (Quality  
11 Assurance).

12 7. CONCEPTUAL REMEDIAL DESIGN REPORT

13 a. In accordance with the timeframe set forth in the  
14 Work Schedule and the Remedial Design Workplan, Respondents shall  
15 submit a Conceptual Remedial Design Report. The Conceptual  
16 Remedial Design ends with the completion of approximately 30  
17 percent of the total design effort.

18 b. The Conceptual Remedial Design Report shall include  
19 at a minimum the following:

- 20 (1) Design criteria and bases;
- 21 (2) Project delivery analysis focusing on the  
22 management approach to be used in carrying  
23 out the design and implementing the Remedial  
24 Action Work, including procurement method and  
25 contracting strategy, health and safety  
26 considerations, review requirements, and  
27 contractor and equipment availability;
- 28 (3) Preliminary plans, drawings, and sketches;

- (4) Outline of required specifications;
- (5) Preliminary construction schedule; and
- (6) Results of value engineering.

#### 8. PRE-FINAL REMEDIAL DESIGN REPORT

a. In accordance with the timeframe set forth in the Work Schedule and the Remedial Design Workplan, Respondents shall submit a Pre-final Remedial Design Report. The Pre-final Remedial Design represents approximately 65 percent of the total design effort. The Pre-final Remedial Design Report shall incorporate all EPA comments on and all requested EPA changes to the Conceptual Remedial Design Report.

b. The Pre-final Remedial Design Report shall include at a minimum the following:

- (1) Material and equipment requisitions;
- (2) Site preparation requirements;
- (3) Recommended vendor lists;
- (4) Process flow diagrams;
- (5) Quality Control source list; and
- (6) Punch list of needed items.

#### 9. FINAL REMEDIAL DESIGN

a. In accordance with the timeframe set forth in the Work Schedule and the Remedial Design Workplan, Respondents shall submit a Final Remedial Design Report. The Final Remedial Design represents 100 percent of the total design effort. The Final Remedial Design Report shall incorporate all EPA comments on and all requested EPA changes to the Pre-final Remedial Design Report.

b. The Final Remedial Design Report shall include at a

1 minimum the following:

2 (1) Final design plans and specifications; and

3 (2) Preliminary construction schedule.

4 10. REMEDIAL ACTION WORKPLAN

5 a. In accordance with the timeframe set forth in the  
6 Work Schedule, Respondents shall submit a Remedial Action  
7 Workplan.

8 b. The Remedial Action Workplan shall include at a  
9 minimum the following:

10 (1) Identification of the Remedial Action team,  
11 including key personnel, descriptions of  
12 duties, and lines of authority;

13 (2) Description of the roles and relationships of  
14 the Respondents, Project Coordinator,  
15 Remedial Action Engineer, Independent Quality  
16 Assurance Team, Remedial Design  
17 Architect/Engineer, and Remedial Action  
18 Contractor;

19 (3) Plan that describes the necessary  
20 coordination with the Settling Defendants;

21 (4) Process for the selection of the Remedial  
22 Action Contractor;

23 (5) Schedule for the Remedial Action;

24 (6) Method to implement the Construction Quality  
25 Assurance Plan;

26 (7) Health and Safety Plan for field construction  
27 activities;

28 (8) Procedures for data collection during the

1 Remedial Action Work to validate the  
2 completion of the Remedial Action.

3 11. INTERIM REMEDIAL ACTION REPORT

4 a. In accordance with the timeframe set forth in the  
5 Work Schedule, Respondents shall submit an Interim Remedial  
6 Action Report. This Report shall document that the facilities  
7 constructed by Respondents pursuant to this Order are consistent  
8 with the design specifications, and are operational and  
9 functional.

10 b. The Interim Remedial Action Report shall include at  
11 a minimum the following:

- 12 (1) Synopsis of the Remedial Action Work and  
13 certification of the design and construction;  
14 (2) Explanation of any modifications to the plans  
15 and why these were necessary;  
16 (3) Listing of the performance criteria, with an  
17 explanation of any modifications to these  
18 criteria;  
19 (4) Results of monitoring indicating that the  
20 Work will meet or exceed the performance  
21 criteria.

22 XI. OBLIGATION TO COOPERATE AND COORDINATE

23 A. Respondents shall coordinate their performance of the  
24 Work with the tasks to be performed at the Site by Lockheed and  
25 the City of Burbank pursuant to the Consent Decree, such that the  
26 Work required by this Order and the tasks required by the Consent  
27 Decree are accomplished in a timely and satisfactory manner.  
28 Such coordination shall include, but not be limited to,

1 cooperating in scheduling and holding meetings to discuss the  
2 Work and the tasks under the Decree.

### 3 XII. ADDITIONAL RESPONSE ACTIONS

4 A. EPA may determine that in addition to the Work identified  
5 in this Order and attachments to this Order, additional response  
6 activities may be necessary to meet the performance standards or  
7 to otherwise protect human health, welfare and the environment.  
8 If EPA determines that additional response activities are  
9 necessary, EPA may require Respondents to submit to EPA for  
10 review and approval a workplan for such additional response  
11 activities. EPA may also require Respondents to modify any plan,  
12 design, or other deliverable required by this Order, including  
13 any approved deliverables.

14 B. Unless otherwise provided by EPA, within thirty (30) days  
15 of receipt of notice from EPA that additional response activities  
16 are necessary pursuant to this Section, the Respondents shall  
17 submit a workplan for such response activities to EPA for review  
18 and approval.

19 C. EPA shall take action on such workplan consistent with  
20 Section XVI (EPA Review of Submissions).

21 D. Respondents shall notify EPA of their intent to perform  
22 such additional response activities within seven (7) days after  
23 receipt of EPA's request for additional response activities.  
24 Respondents shall promptly implement the workplan as approved by  
25 EPA, in accordance with the standards, specifications, and  
26 schedule contained in the approved workplan or otherwise issued  
27 by EPA pursuant to this Order.

**XIII. EPA PERIODIC REVIEW**

Under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), EPA may review conditions at the Site to assure that the Work performed pursuant to this Order adequately protects human health and the environment. Respondents shall conduct, if requested by EPA, the requisite studies, investigations, or other response actions (or any portions thereof) as EPA determines necessary in order to permit EPA to conduct the review under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c). As a result of any review performed under this Section, Respondents may be required to perform additional activities or to modify Work previously performed.

**XIV. ENDANGERMENT AND EMERGENCY RESPONSE**

A. In the event of any action or occurrence during the performance of the Work which may present an immediate threat to the public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize the threat, and shall immediately notify EPA's Remedial Project Manager ("RPM") (see Section XIX below). If EPA's RPM is not available, Respondents shall notify the EPA Emergency Response Section, Region IX. Respondents shall take such action in consultation with EPA's RPM (or, if the RPM is unavailable, the EPA Emergency Response Section, Region IX, at (415) 744-2000) and in accordance with all applicable provisions of this Order, including but not limited to the Health and Safety Plan. In the event that Respondents fail to take appropriate response action as required by this Section XIV, and EPA takes that action instead, Respondents shall be liable to EPA for all costs of the response action.

1 B. The Director of the Hazardous Waste Management Division,  
2 EPA Region IX, may determine that acts or circumstances (whether  
3 related to or unrelated to this Order) may require a halt to the  
4 Work and may order Respondents to stop further implementation of  
5 the Work or some portion of the Work. EPA may order Respondents  
6 to cease activities at the Site.

7 C. EPA's RPM shall also have authority, consistent with the  
8 NCP, to halt any Work required by this Order and to take any  
9 necessary response actions.

10 D. Nothing in this Order shall be deemed to limit any  
11 authority of the United States to take, direct, or order all  
12 appropriate action to protect human health, welfare, and the  
13 environment or to prevent, abate, or minimize an actual or  
14 threatened release of hazardous substances on, at, or from the  
15 Site.

#### 16 XV. FORM OF NOTICE

17 A. Except insofar as oral notification is specifically  
18 provided for in this Order, when notification to or communication  
19 with the EPA, EPA's Oversight Representative CH2M Hill, Lockheed,  
20 the City, Department of Health Services Office of Drinking Water  
21 (DHS), or California Regional Water Quality Control Board  
22 (CRWQCB) is required by this Order, it shall be in writing,  
23 postage prepaid, and addressed as follows:

##### 24 1. As to EPA:

25 Colette Kostelec  
26 Remedial Project Manager  
27 San Fernando Valley Superfund Site  
28 Hazardous Waste Management Division  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street (H-6-4)  
San Francisco, CA 94105

1           2. As to CH2M Hill:

2           Mike Arends  
3           CH2M Hill  
4           2510 Redhill Avenue, Suite A  
5           Santa Ana, CA 92705

6           3. As to Lockheed:

7           Ron Helgersen  
8           Lockheed Engineering and Sciences Company  
9           2550 N. Hollywood Way, Suite 305  
10          Burbank, CA 91505

11          4. As to the City:

12          General Manager  
13          City of Burbank  
14          Public Service Department  
15          164 West Magnolia Blvd.  
16          Burbank, CA 91503-0631

17          5. As to DHS:

18          Gary Yamamoto  
19          California Department of Health Services  
20          Office of Drinking Water  
21          1449 West Temple Street, Rm. 224  
22          Los Angeles, CA 90026

23          6. As to CRWQCB:

24          Hank Yacoub  
25          California Regional Water Quality Control Board  
26          101 Centre Plaza Drive  
27          Monterey Park, CA 91754

28          B. If any of the addresses or names in Subpart XV.A change,  
EPA will notify Respondents in writing and Respondents shall  
address all submittals or other communications to the new person  
or address.

C. In the case of written notices or submittals, a notice or  
submittal shall be deemed to have occurred on the date the notice  
or submittal is received by the party to whom notice must be  
given or a document must be submitted pursuant to this Order.



**XVI. EPA REVIEW OF SUBMISSIONS**

A. After review of any deliverable, plan, report, or other item (including any workplan submitted pursuant to Section XII (Additional Response Actions)) which is required to be submitted for review and approval pursuant to this Order, EPA may:

1. approve, in whole or in part, the deliverable;
2. disapprove, in whole or in part, the deliverable and direct Respondents to resubmit the deliverable after incorporating all of EPA's comments and including all requested EPA changes;
3. approve the deliverable with modification by EPA;
4. approve the deliverable with specified conditions; or
5. disapprove the deliverable and assume performance of all or any part of any response action that is or should have been addressed by the submission.

B. All actions taken by EPA pursuant to Subpart A of this Section will be communicated to Respondents in writing by the Director, Hazardous Waste Management Division, EPA Region IX, or his representative. No informal advice, guidance, suggestions or comments by EPA personnel regarding reports, plans, specifications, schedules or any other matter shall relieve Respondents of their obligations to obtain formal approvals as required by this Order.

C. In the event of approval, approval with modifications by EPA, or approval with special conditions, Respondents shall proceed to take any action required by the deliverable, as approved or modified by EPA, in accordance with any schedule contained therein.

1 D. Upon receipt of a notice of disapproval requesting a  
2 resubmittal, Respondents shall, within five (5) days or such  
3 longer time as specified by EPA in writing in its notice of  
4 disapproval, correct the deficiencies, consistent with any  
5 comments by EPA and incorporating any changes requested by EPA,  
6 and resubmit the deliverable for approval. Notwithstanding the  
7 notice of disapproval, Respondents shall proceed, if so directed  
8 by EPA, to take any action required by the non-deficient portions  
9 of the deliverable.

10 E. Submission of a deficient deliverable or failure to  
11 submit a deliverable according to any schedule contained in this  
12 Order, incorporated into this Order by reference, submitted or  
13 prepared by Respondents and approved by EPA pursuant to this  
14 Order or issued or modified by EPA pursuant to this Order shall  
15 be considered a violation of this Order. An approval by EPA of  
16 an initially disapproved and resubmitted deliverable shall end  
17 the period of the violation with respect to the disapproved  
18 deliverable.

19 F. All deliverables required by this Order to be submitted  
20 for review and approval are, upon EPA approval, incorporated into  
21 this Order as requirements of this Order and shall be an  
22 enforceable part of this Order. Any noncompliance by Respondents  
23 with such EPA-approved deliverables shall be considered a  
24 violation of this Order.

25 G. EPA's approval of any plan, deliverable, report or other  
26 submittal under this Order shall not be deemed to imply that EPA  
27 agrees with every statement or characterization contained in such  
28 plan, deliverable, report or other submittal.

1 H. Notwithstanding any approval which may be granted by EPA,  
2 no warranty or guarantee of any kind, either express or implied,  
3 is provided by EPA with regard to the Work.

#### 4 XVII. QUALITY ASSURANCE

5 A. Respondents shall submit to EPA for review and approval,  
6 in accordance with the Work Schedule, a comprehensive Quality  
7 Assurance ("QA") Project Plan for all Work to be performed  
8 pursuant to this Order. The QA Project Plan shall be prepared in  
9 accordance with (i) U.S. EPA *Interim Guidelines and*  
10 *Specifications for Preparing Quality Assurance Project Plans,*  
11 *QAMS 005/80 (December 1980); (ii) U.S. EPA Region IX Guidance for*  
12 *Preparing QA Project Plans for Superfund Remedial Projects, Doc.*  
13 *90A-03-89 (September 1989); and (iii) U.S. EPA Data Quality*  
14 *Objectives Development Guidance for Remedial Response Actions,*  
15 *EPA/540/G87/003 and 004; or (iv) any superseding or amended*  
16 *version of these documents provided by EPA to the Respondents.*  
17 Upon receipt of EPA's approval of the Final QA Project Plan,  
18 Respondents shall immediately implement the QA Project Plan.

19 B. Respondents shall use QA procedures and protocols in  
20 accordance with the approved QA Project Plan and shall utilize  
21 standard EPA sample chain of custody procedures, as documented in  
22 (i) EPA National Enforcement Investigations Center Policies and  
23 Procedures Manual, EPA-330/9-78-001-R (May 1978, revised May  
24 1986); and (ii) EPA National Enforcement Investigations Center  
25 Manual for the Evidence Audit (April 1984); or (iii) any amended  
26 or superseding version of these documents provided by EPA to  
27 Respondents, for all sample collection and analysis activities  
28 conducted pursuant to this Order.

1 C. In order to provide quality assurance and maintain  
2 quality control regarding all samples collected pursuant to this  
3 Order, Respondents shall:

4 1. Use only laboratories which have a documented quality  
5 assurance program that complies with EPA guidance document QAMS-  
6 005/80.

7 2. Ensure that all contracts with laboratories utilized  
8 by Respondents for analysis of samples taken pursuant to this  
9 Order:

10 a. provide for access of EPA personnel and EPA-  
11 authorized representatives, and

12 b. allow EPA personnel and EPA's authorized  
13 representatives to consult with the personnel that performed  
14 analyses for Respondents.

15 3. Ensure that all laboratories utilized by Respondents  
16 for analysis of samples taken pursuant to this Order perform all  
17 analyses in accordance with the approved QA Project Plan.

18 4. Ensure that all laboratories utilized by Respondents  
19 for analysis of samples taken pursuant to this Order participate  
20 in an EPA or EPA-equivalent Laboratory Water Supply Performance  
21 Evaluation Study. As part of the QA program, Respondents must  
22 use a laboratory that, upon request by EPA, shall perform, not no  
23 expense to EPA, analyses of samples provided by EPA to  
24 demonstrate the quality of each laboratory's data. If a  
25 laboratory used by Respondents is certified for drinking water  
26 analyses by the California Department of Health Services,  
27 Respondents shall request that the laboratory include a notation  
28 of the valid certification on the title page of the analyses

1 results report.

2 5. Ensure that all laboratories utilized by Respondents  
3 for analysis of samples taken pursuant to this Order:

4 a. maintain, and provide upon request, the records  
5 outlined in U.S. EPA Region IX, *Laboratory Documentation Require-*  
6 *ments for Data Validation* (January 1990), and

7 b. perform all data validation specified in the QA  
8 Project Plan in accordance with *Laboratory Data Validation*  
9 *Functional Guidelines for Evaluating Inorganic Analysis, Draft*  
10 *(July 1988)*, and the *Laboratory Data Validation Functional Guide-*  
11 *lines for Evaluating Organic Analysis, Draft* (December 1990,  
12 revised June 1991) or any amended or superseding version of these  
13 documents provided by EPA to Respondents.

14 6. Require by contract and use their best efforts to  
15 ensure that samples taken on Respondents' behalf for purposes of  
16 implementing this Order are retained and disposed of by  
17 analytical laboratories in accordance with EPA's customary  
18 contract procedures for sample retention, as outlined in the  
19 *Contract Laboratory Project Statement of Work for Organics* (March  
20 1990, revised August 1991), and *Contract Laboratory Project*  
21 *Statement of Work for Inorganics* (March 1990, revised September  
22 1991) or any amended or superseding versions of these documents  
23 provided by EPA to Respondents.

24 XVIII. COMPLIANCE WITH APPLICABLE LAWS

25 A. The Work performed by Respondents pursuant to this Order  
26 shall comply with the applicable or relevant and appropriate  
27 requirements ("ARARs") identified in the ROD, ESD and Subpart F  
28 of Section VII of the Consent Decree, except insofar as the ESD

1 or the Consent Decree explicitly state that earlier-identified  
2 ARARs are superseded by the ESD or the Consent Decree. All  
3 activities taken by Respondents pursuant to this Order shall also  
4 be performed in accordance with the requirements of all  
5 applicable federal, state, and local laws, regulations, and  
6 permitting requirements; provided that, as set forth in Section  
7 121(e) of CERCLA, 42 U.S.C. § 9621(e), and the NCP, no permit  
8 shall be required for any portion of the Work conducted entirely  
9 onsite. Where any portion of the Work requires a federal or  
10 state permit or approval, Respondents shall submit timely  
11 applications and take all other actions necessary to obtain and  
12 to comply with all such permits or approvals.

13 B. This Order is not, and shall not be construed to be, a  
14 permit issued pursuant to any federal or state statute or regula-  
15 tion.

16 C. Nothing in this Order shall be deemed to constitute a  
17 pre-authorization of a CERCLA claim within the meaning of Sec-  
18 tions 111 or 112 of CERCLA, 42 U.S.C. §§ 9611 or 9612.

19 **XIX. REMEDIAL PROJECT MANAGER AND PROJECT COORDINATOR**

20 A. All communications, whether written or oral, from any  
21 Respondent to EPA shall be directed to EPA's Remedial Project  
22 Manager ("RPM"); provided that all communication from counsel for  
23 Respondents shall be directed to counsel representing EPA.  
24 Respondents shall submit to EPA three (3) copies of all  
25 deliverables, plans, reports, and other submittals required to be  
26 submitted by this Order, and shall send these documents by  
27 overnight mail or certified mail, return receipt requested.  
28

1 B. EPA's RPM is:

2 Colette Kostelec  
3 San Fernando Valley Superfund Site  
4 Hazardous Waste Management Division  
5 U.S. Environmental Protection Agency, Region IX  
6 75 Hawthorne Street (H-6-4)  
7 San Francisco, CA 94105  
8 (415) 744-2253

9 C. EPA has the unreviewable right to change its RPM. If EPA  
10 changes its RPM, EPA will inform Respondents in writing of the  
11 name, address, and telephone number of the new RPM.

12 D. EPA's RPM shall have the authority lawfully vested in a  
13 Remedial Project Manager and On-Scene Coordinator by the NCP, 40  
14 C.F.R. Part 300 et seq., including such authority as may be added  
15 by amendments to 40 C.F.R. Part 300. EPA's RPM shall have the  
16 authority, consistent with the NCP, to halt any work required by  
17 this Order, and to take any necessary response action.

18 E. Within ten (10) days after the effective date of this  
19 Order, Respondents shall submit to EPA in writing the name,  
20 address, telephone number and qualifications of their proposed  
21 Project Coordinator, including the primary support entities and  
22 staff, proposed to be used in carrying out Work under this Order,  
23 for EPA review and approval.

24 F. If EPA disapproves of the selection of the Project  
25 Coordinator, Respondents shall submit to EPA within thirty (30)  
26 days after receipt of EPA's disapproval of the Project Coordina-  
27 tor previously selected, a list of at least three Project  
28 Coordinators, their addresses, telephone numbers, and qualifica-  
tions, including primary support entities and staff, that would  
be acceptable to Respondents. EPA will thereafter provide notice

1 to Respondents of the names of the Project Coordinators on this  
2 list that are acceptable to EPA (if any). Respondents may then  
3 select any approved Project Coordinator from that list and shall  
4 notify EPA of the name of the Project Coordinator selected within  
5 fifteen (15) days of EPA's designation of acceptable Project  
6 Coordinators.

7 G. If at any time Respondents wish to change their Project  
8 Coordinator, at least ten (10) days prior to the date of the  
9 desired change Respondents shall provide to EPA for review and  
10 approval the name and qualifications of the proposed Project  
11 Coordinator and shall obtain approval from EPA before the new  
12 Project Coordinator undertakes any responsibilities under this  
13 Order.

14 H. The Project Coordinator shall be responsible for oversee-  
15 ing Respondents' implementation of the Work required by this  
16 Order and for coordinating communication between EPA and  
17 Respondents.

#### 18 XX. SITE ACCESS AND NOTIFICATION

##### 19 A. Access to Areas Not Owned or Controlled by Respondents

20 1. To the extent that the Site or other areas where Work  
21 is to be performed under this Order are presently owned or  
22 controlled by parties other than Respondents and to the extent  
23 that access to or easements over such property is required for  
24 the proper and complete performance of this Order, Respondents  
25 shall use their best efforts to obtain from the owners or those  
26 person who have control over the property, including lessees,  
27 access agreements within thirty (30) days of the effective date  
28 of this Order. For purposes of this Section, "best efforts"



1 includes but is not limited to seeking judicial assistance and  
2 the payment of reasonable sums of money as consideration for  
3 access.

4         2. Any access agreements to be obtained by Respondents  
5 shall provide access to EPA, its contractors and other represen-  
6 tatives, and to Respondents and their contractor(s) and  
7 authorized representatives, and such agreements shall specify  
8 that Respondents are not EPA's representatives with respect to  
9 liability associated with Site activities. Respondents shall  
10 provide copies of any access agreements obtained pursuant to this  
11 Section to EPA within seven (7) days of execution of the  
12 agreement.

13         3. If the required access agreements are not obtained  
14 within the thirty (30) day period specified above, Respondents  
15 shall notify EPA within five (5) days after the expiration of  
16 that time period regarding both the lack of and efforts to obtain  
17 such agreements. Subject to the United States' non-reviewable  
18 discretion, the United States may direct Respondents to continue  
19 to use best efforts to obtain access, may use its legal  
20 authorities to obtain access for the Respondents, may perform the  
21 Work in the areas at issue with EPA employees or EPA authorized  
22 representatives, and may modify, amend or terminate the Order.  
23 If the United States incurs costs related to obtaining access in  
24 areas to which Respondents were unable to obtain access,  
25 Respondents shall be liable for all costs incurred by EPA,  
26 including but not limited to attorneys' fees and other legal  
27 costs.

28         4. In the event that EPA, or its authorized

1 representatives, performs Work in areas to which Respondents were  
2 unable to gain access, and EPA does not modify, amend or  
3 terminate the Order, Respondents shall perform all other Work not  
4 requiring access to that particular area. Respondents shall  
5 integrate the results of any such tasks undertaken by EPA or its  
6 authorized representatives into its reports and deliverables.

7 B. Access to Areas Owned or Controlled by Respondents

8 1. Respondents or any of their agents or representatives  
9 shall allow EPA and its authorized representatives to enter and  
10 freely move about all property which they own or control at the  
11 Site and off-Site areas subject to or affected by the Work under  
12 this Order or where documents required to be prepared or  
13 maintained by this Order are located, for the purposes of:

14 a. inspecting conditions, activities and the results of  
15 activities related to the Site;

16 b. inspecting and copying any records, files, photo-  
17 graphs, documents, sampling and monitoring data, contracts,  
18 operating logs, and other documents or writings related to Site;

19 c. reviewing the progress of the Respondents in  
20 carrying out the terms of this Order;

21 d. conducting tests as EPA or its authorized  
22 representatives deem necessary;

23 e. using a camera, sound recording device or other  
24 documentary type equipment;

25 f. and verifying the data submitted to EPA by  
26 Respondents.

27 2. Under the provisions of Section 104(e) of CERCLA, 42  
28 U.S.C. § 9604(e), EPA explicitly reserves the right to observe

1 the Work of Respondents as it is performed. EPA reserves, for  
2 itself and its authorized representatives, the right to take  
3 splits or duplicates of any samples obtained by any Respondent or  
4 anyone acting on any Respondent's behalf in the implementation of  
5 the Work. EPA and its authorized representatives shall also have  
6 the right to take any other samples that EPA or its authorized  
7 representatives deem necessary.

8 C. Sampling and Project Notification

9 1. Respondents shall notify EPA not less than fourteen  
10 (14) days in advance of any sample collection activity related to  
11 the Work. Respondents shall notify EPA not less than fourteen  
12 (14) days in advance of any disposal of any such sample, and EPA  
13 shall have the opportunity to take possession of all or a portion  
14 of such sample. Respondents shall notify EPA at least seven (7)  
15 days in advance of any changes in the sampling schedule, if  
16 possible. If changes in any scheduled sampling are required  
17 within seven (7) days of the scheduled sampling, Respondents  
18 shall notify EPA orally at least forty-eight (48) hours prior to  
19 the new date of any such sampling.

20 2. Each Respondent shall notify EPA no less than thirty  
21 (30) days in advance of commencing any project other than the  
22 Work that may affect implementation of the interim remedy for the  
23 Site or produce data or information that may affect an evaluation  
24 of the remedy, including but not limited to placement of any  
25 groundwater monitoring wells in the vicinity of the Site.

26 3. Nothing in this Order shall be interpreted as limiting  
27 or affecting any right of entry or inspection authority EPA has  
28 pursuant to law.

1           **XXI. DOCUMENT AVAILABILITY AND RECORD PRESERVATION**

2           **A. Document Availability**

3           1. Respondents shall provide to EPA upon request clear  
4 and legible copies, as well as access to the original, of all  
5 records, documents and information (other than documents or  
6 information privileged under the attorney-client privilege or  
7 work product doctrine) within their possession and/or control or  
8 that of its contractors or agents relating to activities at the  
9 Site or to the implementation of this Order, including but not  
10 limited to sampling, analysis, chain-of-custody records,  
11 manifests, drafts, trucking logs, receipts, reports, sample  
12 traffic routing, notes and correspondence. Respondents shall  
13 also make available to EPA for purposes of investigation,  
14 information gathering, or testimony, its employees, agents or  
15 representatives with knowledge of relevant facts concerning the  
16 performance of the Work.

17           2. Respondents may assert a claim of business  
18 confidentiality covering part of all of the information submitted  
19 to EPA pursuant to this Order under 40 C.F.R. § 2.203, provided  
20 such claim is not inconsistent with Section 104(e)(7) of CERCLA,  
21 42 U.S.C. § 9604(e)(7), or other provisions of law. This claim  
22 shall be asserted in the manner described by 40 C.F.R. § 2.203(b)  
23 and substantiated by Respondents at the time the claim is made.  
24 Information determined to be confidential by EPA will be given  
25 the protection provided by CERCLA Section 104(e)(7), 42 U.S.C. §  
26 9604(e)(7). If no such claim accompanies the information when it  
27 is submitted to EPA, it may be made available to the public by  
28 EPA without further notice to Respondents. Respondents shall not

1 assert confidentiality claims with respect to any data related to  
2 site conditions, sampling, or monitoring (including but not  
3 limited to hydrogeological or chemical data and groundwater  
4 monitoring data) or any other information covered by CERCLA  
5 Section 104(e)(7)(F), 42 U.S.C. § 9604(e)(7)(F).

6 3. Respondents shall maintain for the period during which  
7 this Order is in effect, an index of any materials, records, or  
8 documents relating to activities at the Site or to the implemen-  
9 tation of this Order, that Respondents claim contain confidential  
10 business information and which EPA has requested. Respondents  
11 shall routinely update this index at least every six months. The  
12 index shall contain, for each item, the date, author, addressee,  
13 and subject of the item. Upon a written request from EPA,  
14 Respondents shall submit a copy of the most recent index to EPA.

15 4. Respondents shall maintain for the period during which  
16 this Order is in effect, an index of any materials, records, or  
17 documents relating to activities at the Site or to the implemen-  
18 tation of this Order, that Respondents claim are covered by the  
19 attorney work product doctrine or the attorney client privilege  
20 and which fall within any document request made by EPA pursuant  
21 to this Order. Respondents shall routinely update this index at  
22 least every six months. The index shall contain, for each item,  
23 the date, author, addressee, and subject of the item. Upon a  
24 written request from EPA, Respondents shall submit a copy of the  
25 most recent index to EPA.

26 B. Record Preservation

27 1. Within sixty (60) days after the effective date of  
28 this Order, each Respondent shall submit a written certification

1 to EPA's RPM, signed by a responsible corporate official, or in  
2 the case of the Antonini Family Trust, the trustee, stating  
3 whether or not Respondent has altered, mutilated, discarded,  
4 destroyed, or otherwise disposed of, since notification of  
5 potential liability by the United States or the State, any  
6 records, documents, or other information relating to: (i) its  
7 potential liability under CERCLA, or (ii) its use of or disposal  
8 of hazardous substances with regard to the Site. This  
9 certification shall also state that the trustee or responsible  
10 corporate official has conducted a thorough investigation of that  
11 Respondent's officers, directors, employees, agents, contractors,  
12 subcontractors, consultants or other persons having knowledge of  
13 such information. Each Respondent shall not alter, mutilate,  
14 discard, destroy, or otherwise dispose of any such records,  
15 documents, or other information without prior EPA approval. If  
16 EPA requests any or all of these records, documents or other  
17 information, the applicable Respondent shall provide clear and  
18 legible copies, as well as access to the original, of the  
19 records, documents or other information (other than documents or  
20 information privileged under the attorney-client privilege or  
21 work product doctrine) to EPA.

22 C. Each Respondent shall provide to EPA, upon request, clear  
23 and legible copies, as well as access to the originals, of any  
24 and all documents and information within its possession or  
25 control or in the possession or control of any of its divisions,  
26 employees, agents, accountants, contractors, subcontractors or  
27 attorneys (other than documents or information privileged under  
28 the attorney-client privilege or the work product doctrine)

1 relating to activities at the Site or the implementation of this  
2 Order, including but not limited to sampling analysis, chain of  
3 custody records, manifests, drafts, trucking logs, reports,  
4 correspondence or other documents or information related to the  
5 Site.

6 D. For a minimum period of ten (10) years following EPA's  
7 notification to Respondents that the Work has been completed,  
8 Respondents shall preserve and retain all records and documents  
9 in their possession or control, including the documents in the  
10 possession or control of their contractors and agents, on and  
11 after the effective date of this Order that relate in any manner  
12 to the Site. At the conclusion of this document retention  
13 period, Respondents shall notify the United States at least  
14 ninety (90) calendar days prior to the destruction of any such  
15 records or documents, and upon request by the United States,  
16 Respondents shall deliver any such records or documents to EPA.

#### 17 XXII. DELAY IN PERFORMANCE

18 A. Any delay in performance of this Order that, in EPA's  
19 judgment, is not properly justified by Respondents shall be  
20 considered a violation of this Order. Any delay in performance  
21 of this Order shall not affect Respondents' obligations to fully  
22 perform all obligations under the terms and conditions of this  
23 Order.

24 B. Respondents shall notify EPA of any delay or anticipated  
25 delay in performing any requirement of this Order. Such notifi-  
26 cation shall be made by telephone to EPA's RPM within forty-eight  
27 (48) hours after Respondents first knew or should have known that  
28 a delay might occur. Respondents shall adopt all reasonable

1 measures to avoid or minimize any such delay. Within five (5)  
2 business days after notifying EPA by telephone, Respondents shall  
3 provide written notification fully describing: a) the nature of  
4 the delay; b) any asserted justification for the delay; c) any  
5 reason why Respondents should not be held strictly accountable  
6 for failing to comply with any relevant requirements of this  
7 Order; d) the measures planned and taken to minimize the delay;  
8 and e) a schedule for implementing the measures that will be  
9 taken to mitigate the effect of the delay. Increased costs or  
10 expenses associated with implementation of the activities called  
11 for in this Order are not a justification for any delay in  
12 performance.

### 13 **XXIII. ASSURANCE OF ABILITY TO COMPLETE WORK**

14 A. Respondents shall demonstrate their ability to complete  
15 the Work required by this Order and to pay all claims that arise  
16 from the performance of the Work by obtaining and presenting to  
17 EPA for review and approval within thirty (30) days of the  
18 effective date of this Order, one of the following: (i) a  
19 performance bond; (ii) a letter of credit; (iii) a guarantee by a  
20 third party; or (iv) internal financial information sufficient to  
21 allow EPA to determine that Respondents have sufficient assets  
22 available to perform the Work. Respondents shall demonstrate  
23 financial assurance in an amount not less than two and one-half  
24 million dollars (\$2,500,000.00). If Respondents seek to  
25 demonstrate ability to complete the Work by means of internal  
26 financial information, or by guarantee of a third party, they  
27 shall resubmit such information annually, on the anniversary of  
28 the effective date of this Order. If EPA determines that such



1 financial information is inadequate, Respondents shall, within  
2 thirty (30) days after receipt of EPA's notice of determination,  
3 obtain and present to EPA for approval one of the other three  
4 forms of financial assurance listed above in an amount not less  
5 than two and one-half million dollars (\$2,500,000.00).

6 B. A least seven (7) days prior to commencing any work at  
7 the Site pursuant to this Order, Respondents shall submit to EPA  
8 a certification that Respondents or their contractors and subcon-  
9 tractors have adequate insurance coverage or have indemnification  
10 for liabilities for injuries or damages to persons or property  
11 which may result from the activities to be conducted by or on  
12 behalf of Respondents pursuant to this Order. Respondents shall  
13 ensure that such insurance or indemnification is maintained for  
14 the duration of the performance of the Work required by this  
15 Order.

16 **XXIV. UNITED STATES NOT LIABLE**

17 A. The United States, including but not limited to its  
18 agencies, divisions, departments, agents, employees and other  
19 representatives, by issuance of this Order, assumes no liability  
20 for any injuries or damages to persons or property resulting  
21 entirely or partially from acts or omissions of any or all  
22 Respondents or their directors, officers, employees, agents,  
23 representatives, successors, assigns, contractors, consultants or  
24 any other person acting on their behalf in carrying out any  
25 action or activity pursuant to this Order.

26 B. The United States, including but not limited to its  
27 agencies, divisions, departments, agents, employees and other  
28 representatives, shall not be deemed to be a party to any

1 contract entered into by any or all of the Respondents or their  
2 directors, officers, employees, agents, representatives, succes-  
3 sors, assigns, contractors, consultants or any other person  
4 acting on their behalf in carrying out any action or activity  
5 pursuant to this Order.

6 C. The Respondents shall save and hold harmless the United  
7 States, including but not limited to its agencies, divisions,  
8 departments, agents, employees and other representatives, from  
9 any and all claims or causes of action or other costs incurred by  
10 the United States, including but not limited to attorneys fees  
11 and other expenses of litigation and settlement arising from or  
12 on account of acts or omissions of Respondents or their  
13 directors, officers, employees, agents, representatives,  
14 successors, assigns, contractors, consultants or any other person  
15 acting on their behalf in carrying out any action or activity  
16 pursuant to this Order.

17 D. Notwithstanding any approvals, permits, or other  
18 permissions which may be granted by the United States or other  
19 governmental entities or any other action by EPA, Respondents  
20 remain fully liable for any costs or damages arising from or  
21 relating to their acts or omissions or the acts of omissions of  
22 any of their contractors, subcontractors, or any other person  
23 acting on their behalf in the performance of the Work or their  
24 failure to perform fully or complete the Work.

#### 25 XXV. ENFORCEMENT AND RESERVATION

26 A. EPA reserves the right to bring an action against any or  
27 all Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607,  
28 for recovery of any response costs incurred by the United States

1 related to this Order and not reimbursed by Respondents, as well  
2 as any other past and/or future costs incurred by the United  
3 States pursuant to CERCLA in connection with the Site. This  
4 reservation shall include but not be limited to past costs,  
5 future costs, direct costs, indirect costs, the costs of  
6 oversight, the costs of compiling the cost documentation to  
7 support oversight cost demand, as well as accrued interest as  
8 provided in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). In  
9 addition, EPA reserves the right to bring an action against any  
10 and all Respondents for injunctive relief and/or civil penalties  
11 under Section 106 of CERCLA, 42 U.S.C. § 9606, and/or for treble  
12 damages under Section 107(c)(3) of CERCLA, 42 U.S.C. §  
13 9607(c)(3).

14 B. Notwithstanding any other provision of this Order, at any  
15 time during the response action, EPA may perform its own studies,  
16 complete the response action (or any portion of the response  
17 action) and seek reimbursement from Respondents for its costs, or  
18 seek any other appropriate relief.

19 C. Nothing in this Order shall preclude EPA from taking any  
20 additional enforcement action, including the modification of this  
21 Order or the issuance of additional orders, or additional removal  
22 or remedial actions as EPA deems necessary or from requiring  
23 Respondents in the future to perform additional activities  
24 pursuant to CERCLA, 42 U.S.C. § 9606(a), et seq., or any other  
25 applicable law. Respondents shall be liable, as provided in  
26 CERCLA Section 107(a), 42 U.S.C. § 9607(a), for the costs of any  
27 such additional actions.

28 D. Notwithstanding any provision of this Order, the United

1 States hereby retains all of its information gathering, inspec-  
2 tion, access and enforcement authorities and rights under CERCLA,  
3 RCRA and any other applicable statutes or regulations.

4 E. Nothing in this Order shall constitute or be construed as  
5 a release from any claim, cause of action or demand in law or  
6 equity against any person for any liability it may have arising  
7 out of or relating in any way to the Site.

8 F. If a court issues an order that invalidates any provision  
9 or this Order or finds that Respondents have sufficient cause not  
10 to comply with one or more provisions of this Order, Respondents  
11 shall remain bound to comply with all provisions of this Order  
12 not invalidated by the court's order.

#### 13 XXVI. ADMINISTRATIVE RECORD

14 A. Upon EPA's request, each Respondent shall submit to EPA  
15 all documents in its possession related to the selection of the  
16 response action for possible inclusion in the administrative  
17 record file.

#### 18 XXVII. CIVIL PENALTIES

19 Respondents shall be subject to civil penalties under  
20 Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than  
21 \$25,000 for each day in which Respondents willfully violate, or  
22 fail or refuse to comply with this Order without sufficient  
23 cause. In addition, failure to properly provide response action  
24 under this Order, or any portion hereof, without sufficient  
25 cause, may result in liability under Section 107(c)(3) of CERCLA,  
26 42 U.S.C. § 9607(c)(3), for punitive damages in an amount at  
27 least equal to, and not more than, three times the amount of any  
28 costs incurred by the United States as a result of such failure

1 to take proper action.

2 **XXVIII. EFFECTIVE DATE AND COMPUTATION OF TIME**

3 This Order shall be effective thirty-five (35) days after  
4 this Order is signed by the Director of the Hazardous Waste  
5 Management Division, EPA Region IX. Unless otherwise specified  
6 in this Order, all times for performance of ordered activities  
7 shall be calculated from this effective date.

8 **XXIX. SECTION HEADINGS**

9 The section headings set forth in this Order and its Table  
10 of Contents are included for convenience of reference only and  
11 shall be disregarded in the construction and interpretation of  
12 any of the provisions of this Order.

13 **XXX. OPPORTUNITY TO CONFER**

14 A. Respondents may, within fifteen (15) days after the date  
15 this Order is signed, request a conference with EPA Region IX's  
16 RPM and Assistant Regional Counsel concerning the provisions of  
17 this Order. If requested, the conference shall occur on April  
18 22, 1992 at EPA's Region IX office, 75 Hawthorne Street, San  
19 Francisco, California.

20 B. The purpose and scope of the conference shall be limited  
21 to issues involving the implementation of the response actions  
22 required by this Order and the extent to which Respondents intend  
23 to comply with this Order. This conference is not an evidentiary  
24 hearing, and does not constitute a proceeding to challenge this  
25 Order. It does not give Respondents a right to seek review of  
26 this Order or to seek resolution of potential liability. No  
27 official stenographic record of the conference will be made. If  
28 such conference is held pursuant to Respondent's request, each

1 Respondent may appear in person, or by an attorney or other  
2 representative.

3 C. Requests for a conference must be by telephone followed  
4 by written confirmation mailed that day to EPA's RPM.

5 XXXI. COMPLETION

6 A. Within thirty (30) days after Respondents conclude that  
7 all Work and other activities required by this Order have been  
8 fully performed, including but not limited to any nonroutine  
9 maintenance that may be required, (other than the record  
10 preservation activities required by Subpart XXI.D), Respondents  
11 shall so notify EPA in a Notice of Alleged Completion, including  
12 a brief outline of the basis for Respondents' conclusion. EPA  
13 may respond:

14 1. by identifying in writing to Respondents additional  
15 Work or other activities which may be required, in which case  
16 Respondents shall not resubmit any Notice of Alleged Completion  
17 until completing any such tasks identified by EPA, or

18 2. by scheduling an inspection to be attended by  
19 Respondents' and EPA's representatives. Within thirty (30) days  
20 of any such inspection, Respondents shall submit a report  
21 containing a certification by a registered professional engineer  
22 that the Work has been completed and a certification by  
23 Respondents' Project Coordinator that the Work and all other  
24 activities required by this Order (with the exception of the  
25 record preservation activities required by Subpart XXI.D) have  
26 been completed.

27 3. After receiving the report required by Paragraph  
28 XXXI.A.2, EPA may:

1 a. require such additional activities as may be  
2 necessary to complete the Work or otherwise comply with the  
3 requirements of this Order, or

4 b. based upon its knowledge at the time and  
5 Respondents' report with certifications, issue written  
6 notification to Respondents that the Work has been completed and  
7 all other requirements of the Order (except the record  
8 preservation activities required by Subpart XXI.D) have been met.

9 B. No notification, certification or submittal pursuant to  
10 this Section shall limit EPA's right to perform periodic reviews  
11 pursuant to Section 121(c) of CERCLA, 42 U.S.C. 9621(c), to  
12 pursue Respondents for violation of this Order, including any  
13 failure to meet the requirements of Subpart XXI.D or to take any  
14 action or require Respondents or any other party to take any  
15 action in accordance with CERCLA Sections 104, 106, or 107, 42  
16 U.S.C. 9604, 9606 or 9607, or any other provision of law.

17  
18 IT IS SO ORDERED on this 26<sup>th</sup> day of March, 1992.

19 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
20

21  
22 BY:

  
23 Jeffrey Zelikson, Director  
24 Hazardous Waste Management Division  
25 U.S. Environmental Protection Agency, Region IX  
26  
27  
28

ATTACHMENT A

WORK SCHEDULE

ACTIVITY

DUE DATE

I. PRE-DESIGN ACTIVITIES

A. Selection of Project Coordinator

10 days after  
effective date  
of the Order

B. Selection of RD Architect/Engineer

30 days after  
effective date  
of Order

Finalize Contract

30 days after  
EPA approval of  
Selection

C. Remedial Design Workplan Draft

90 days after  
effective date  
of Order

Final Remedial Design Workplan

30 days after  
EPA approval of  
Draft

D. Site QA Project Plan (QAPP) Draft

90 days after  
effective date  
of Order

Final QAPP

30 days after  
EPA approval of  
Draft

E. Site Health & Safety Plan Draft

90 days after  
effective date  
of Order

Final Health & Safety Plan

30 days after  
EPA approval of  
Draft

F. Permitting Requirements Plan Draft

90 days after  
effective date  
of Order

Final Permitting Requirements Plan

30 days after  
EPA approval of  
Draft



ATTACHMENT A (Continued)

II. DESIGN ACTIVITIES

- |    |   |  |
|----|---|--|
| A. | Conceptual Remedial Design Report Draft | 187 days after effective date of Order |
|    | Final Conceptual RD Report              | 30 days after EPA approval of Draft    |
| B. | Pre-Final Remedial Design Report Draft  | 347 days after effective date of Order |
|    | Final Pre-Final RD Report               | 30 days after EPA approval of Draft    |
| C. | Final Remedial Design Report Draft      | 467 days after effective date of Order |
|    | Final Remedial Design Report            | 30 days after EPA approval of Draft    |

III. CONSTRUCTION OF REMEDIAL ACTION WORK

- |    |   |   |
|----|---|---|
| A. | Selection of Independent Quality Assurance Team | 365 days after effective date of Order  |
|    | Finalize Selection                              | 30 days after EPA approval of Selection |
| B. | Selection of Remedial Action Engineer           | 365 days after effective date of Order  |
|    | Finalize Contract                               | 30 days after EPA approval of Selection |
| C. | Selection of RA Contractors/Subcontractors      | 440 days after effective date of Order  |
|    | Finalize Contracts                              | 30 days after EPA approval of Selection |

ATTACHMENT A (Continued)

D. Remedial Action Workplan Draft

465 days after  
effective date  
of Order

Final RA Workplan

30 days after  
EPA approval of  
Draft

E. Conduct Pre-Construction Conference

IV. IMPLEMENTATION OF REMEDIAL ACTION

A. Construction Complete

695 days after  
effective date  
of Order

B. Pre-final Inspection

C. Final Inspection

D. Interim Remedial Action Report Draft

785 days after  
effective date  
of Order

Final Interim Remedial Action Report

46 days after  
EPA approval of  
Draft

# **EXHIBIT 3**

Scope of Work  
Insurance Requirements

**General Provisions**

Without limiting the Operator's indemnification of the City of Burbank, the operator shall provide and maintain at its own expense, during the term of the Agreement, or as may be further required herein, the following insurance coverages and comply with the following provisions.

By requiring insurance herein, the City does not represent that coverage and limits will necessarily be adequate to protect Operator, and such coverage and limits shall not be deemed as a limitation on Operator's liability under the indemnities granted to the City in this contract.

The City and the Lockheed Martin Corporation (Lockheed Martin) may, by mutual agreement, modify the types and levels of coverage based upon the level of risk associated with the work, the availability of coverages, and the reasonableness of costs associated with the level of protection afforded. However, Commercial General Liability (CGL), workers' compensation, and automobile liability coverage shall equal or exceed the levels of coverage specified in the Second Consent Decree. If the City and Lockheed Martin are unable to agree on the changes to the types and levels of coverage, the cost consultant may review and resolve the issue. Either party may then invoke the dispute resolution provisions of the Consent Decree.

If the Operator fails to maintain the insurance as set forth herein, the City shall have the right, but not the obligation, to purchase said insurance at the Operator's expense.

The Operator shall provide certified copies of all insurance policies required above within ten days of the City's written request for said copies.

The Operator shall also cause such firm to advise the City in writing at least 30 days prior to the expiration or termination of any such insurance.

Along with the appropriate insurance coverages, the Operator shall provide the City and the additional insureds an acceptable hold harmless and indemnity provision covering the work it performs under the contract.

**1.1 Evidence of Insurance.** Prior to project inception, the Operator shall provide an original plus one copy of a Certificate of Insurance executed by a duly authorized representative of each insurer certifying that coverage as required herein has been obtained and remains in force for the period required herein. Individual endorsements executed by the insurance carrier for the coverage are required. In addition, a certified copy of the policy or policies shall be provided by the Operator upon request.

**1.1.1** This verification of coverage shall be sent to the address of the City of Burbank. The

Operator shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the City of Burbank. This approval shall neither relieve or decrease the liability of the Operator.

1.1.2 All certificates shall provide 30 days written notice to the City and the additional insureds prior to the cancellation or material change of any insurance referred to therein.

1.1.3 Except as required in paragraph 2.4.2 below, should any of the work under this Agreement be sublet, the Operator shall require each of its subcontractors of any tier to provide the aforementioned coverages, or Operator shall insure subcontractors under its own policies. In addition, if the subcontractor is an architect or engineer, he or she must provide a professional liability policy with limits as prescribed by the City. The reasonableness of these insurance costs are reviewable by the cost consultant.

1.1.4 The words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted from the certificate form's cancellation provision.

1.1.5 Failure of the City to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Operator's obligation to maintain such insurance.

1.1.6 Failure to maintain the required insurance may result in termination of this contract at the City's option.

1.1.7 **Claims Made Coverage.** If coverage is written on a claims made basis, in addition to coverage requirements above, such policy shall include the following requirements.

1.1.7.1 The policy retroactive date must coincide with or precede the Operator's start of work (including subsequent policies purchased as renewals or replacements).

1.1.7.2 Operator must maintain similar insurance during the required five year extended period of coverage following termination of the contract, including the requirement of adding additional insureds.

1.1.7.3 If insurance is terminated for any reason, Operator agrees to purchase an extended reporting provision of at least five years to report claims arising from work performed in connection with the contract.

1.1.7.4 The policy shall allow for reporting of circumstances or incidents that might give rise to future claims.

1.1.8 **Annual Insurance Report** On or before the execution of the contract and as soon as

practicable after the end of each calendar year during the Term (and in any event within 90 days thereafter), Operator shall furnish or cause to be furnished to the City a report signed by a firm of independent insurance brokers, which may be a firm regularly retained by the Operator, appointed by the Operator and not objected to by the City, showing the insurance then carried and maintained relative to this contract, stating that in the opinion of such firm, such insurance is in full force and effect, that the insurance complies with the terms hereof, and, in the event that the coverage of the Operator is deficient, certifying the maximum coverage which is available on commercially reasonable terms with respect to each risk required to be insured against under this contract. The Operator shall cause such firm to undertake to advise the City in writing promptly of any default in the payment of any premium and of any other act or omission on the part of the Operator of which they have knowledge and which might invalidate or render unenforceable, in whole or in part, any such insurance.

### Insurance

2.0 The Operator shall obtain insurance of the types and in the amounts described below.

2.1 **Commercial General and Umbrella Liability Insurance.** Operator shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$20,000,000 each occurrence and in the annual aggregate, \$10,000,000 of which is dedicated to activities associated with the Burbank Operable Unit.

2.1.1 CGL insurance shall be written on a standard ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract, as well as defense obligations and defense expenses). The policy shall include a severability of interest clause providing that the coverage applies separately to each insured except with respect to the limits of liability.

2.1.2 The CGL insurance shall include the signatories to the Second Consent Decree as additional insureds under the policy, and the commercial umbrella and excess liability insurance, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to these signatories.

2.1.3 Insurance afforded by this policy shall not be canceled or changed without 30 days prior written notice of such cancellation or change being delivered to each additional insured.

2.1.4 Insurance policy(s) shall reflect that Carrier waives all rights against the City and the other signatories to the Second Consent Decree, and their agents, officers, directors, and employees to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained pursuant to paragraph 2.1 of these requirements.

2.1.5 Any self insured retention in the insurance policy(s) is subject to initial review and approval by the City and subject to an annual review.

**2.2 Business Auto and Commercial Umbrella Liability Insurance.** The Operator shall maintain business auto liability and, if , necessary, commercial umbrella liability insurance with a limit of not less than \$20,000,000 combined single limit per occurrence

2.2.1 Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos.)

2.2.2 Business auto coverage shall be written on a standard ISO form or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2.2.3 The City and the other signatories to the Second Consent Decree shall be included as additional insureds under the Business Auto and the Commercial Umbrella, if any.

2.2.4 The insurance policy(s) shall reflect that Carrier waives all rights against the City and the other signatories to the Second Consent Decree and their agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by the business auto liability or commercial liability insurance obtained by the Operator pursuant to Paragraph 2.0 of this scope of work.

2.2.5 Insurance afforded by this policy shall not be canceled or changed without 30 day's written notice of such cancellation or change being delivered to each additional insured.

**2.3 Workers Compensation and Employers Liability Insurance.** The Operator shall maintain workers' compensation, occupational disease coverage, and employer's liability insurance.

2.3.1 The Operator shall maintain statutory workers' compensation coverage including a broad form all-states endorsement.

2.3.2 The Operator shall maintain employer's liability and/or commercial umbrella limits coverage for not less than \$20,000,000 including occupational disease.

2.3.3 The Operator shall include the City and the other signatories to the Second Consent Decree as additional insureds or provide a waiver of the right of subrogation.

2.3.4 The insurance policy(s) shall reflect that Carrier waives all rights against the City , the other additional insureds, and their agents, officers, directors, and employees for recovery of damages to the extent these damages and related claims handling costs are covered by the workers' compensation and employers liability or commercial umbrella and excess liability

insurance obtained by the Operator pursuant to paragraph 2.4 of this scope of work.

2.3.5 Insurance afforded by this policy shall not be canceled or changed without 30 day's written notice of such cancellation or change being delivered to each additional insured.

**2.4 Operator's Pollution Liability and Professional Liability Insurance.** Operator shall maintain contractor's pollution liability (CPL) and professional liability, including pollution errors and omissions (E&O) insurance with a limit of not less than \$25,000,000 per occurrence and \$25,000,000 annual aggregate per location.

2.4.1 CPL and E&O insurance shall be written on a policy form(s) acceptable to the City and provide project-specific coverage for the work the Operator performs under this contract.

2.4.2 CPL and E&O insurance shall cover the liability of any subcontractors performing work for the Operator.

2.4.3 The City and the other signatories to the Second Consent Decree shall be included as additional insureds under the CPL and E&O.

2.4.4 The insurance policy(s) shall reflect that Carrier waives all rights against the City and the other signatories to the Second Consent Decree, and their agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by CPL and E&O insurance maintained pursuant to paragraph 2.4 of this scope of work.

2.4.5 Insurance afforded by this policy shall not be canceled or changed without 30 day's written notice of such cancellation or change being delivered to each additional insured.

**2.5 Commercial Property and Boiler & Machinery, Including Business Interruption Insurance.** The Operator shall maintain commercial property and boiler and machinery insurance covering the building, fixtures, equipment, improvements and betterments to full replacement cost and loss of income as a result of loss or damage to property.

2.5.1 Property and boiler and machinery shall be insured on a blanket all risk basis, including the peril of flood, but not the peril of earthquake shock. Any self insured retention in the policy(s) shall be subject to review and approval by the City and subject to an annual review.

2.5.2 Property and boiler and machinery insurance shall be extended, if not already provided in the policy form(s), to cover all underground property, and shall include the costs to re-drill any damaged underground water wells.

2.5.3 Property and boiler and machinery insurance shall be extended, if not already provided in the policy form, to include resultant damage to insured property from error in design, faulty workmanship or faulty materials. In addition, coverage shall include joint loss, demolition



coverage, increased cost of construction, contingent liability from operation of building laws, extra expense, expediting expense, and service interruption.

2.5.4 Comprehensive boiler and machinery shall include, but not be limited to, increased cost of construction, hazardous materials, water damage, expediting expense, business income, business interruption, joint loss clause, replacement cost and replacement cost valuation, demolition, increased cost of construction, and services interruption.

2.5.5 Flood coverage with a limit equal to the full replacement cost of the insured property shall be provided. This requirement is subject to annual review and modification by the City in recognition of changes in the insurance marketplace.

2.5.6 Contractor shall purchase business income, business interruption, extra expense or similar time element coverage in the amount of \$15,000,000 as part of this commercial property insurance, and in no event shall the City or the signatories to the Second Consent Decree be liable for any business interruption or other consequential loss sustained by Contractor, whether or not it is insured, even if such loss is caused by the negligence of the City or the signatories to the Second Consent Decree or their employees, officers, directors, or agents.

2.5.7 Any coinsurance requirement in the policy(s) shall be eliminated through the attachment of an agreed amount endorsement, the activation of an agreed value option, or as is otherwise appropriate under the particular policy form.

2.5.8 All deductibles will be the responsibility of the Operator and will not exceed \$10,000 per occurrence excluding flood coverage.

2.5.9 The Operator shall name the City of Burbank as Loss Payee.

2.5.10 The insurance policies shall reflect that the Carrier hereby waives any recovery of damages against the City, the other signatories to the Second Consent Decree, and their employees, officers, directors, agents, or representatives, for loss or damage to the building, improvements and betterments, fixtures, equipment, and any other personal property to the extent covered by the commercial property insurance or boiler and machinery insurance required above.

2.5.11 The City shall be included as an insured and loss payee under the commercial property and boiler and machinery insurance.

2.5.12. The coverages required in paragraph 2.5 shall apply as primary insurance.

2.5.13 Insurance required by this paragraph shall not be canceled or changed without 30 days prior written notice of such cancellation or change being delivered to a designated notice recipient for each signatory to the Second Consent Decree.

2.5.14 Prior to making any material change to the coverages described in this Section 2.5, et seq., the City and Lockheed Martin shall notify the Settling Cash Defendants (through a single representative to be named by such Defendants). Any objections by the Settling Cash Defendants shall be reviewed and resolved by the Cost Consultant, and any party may then invoke the dispute resolution provisions of the Consent Decree.